No. 13393

United States Court of Appeals

for the Ninth Circuit.

FRED G. STEVENOT, Trustee of Coastal Plywood & Timber Company, a Corporation, Debtor,

Appellant,

vs.

J. W. NORBERG, NILS G. MATSON, MERRITT W. TALLMAN, MILO F. BARNHART, ROLAND C. ZIMMERMANN, FLOYD C. JACKSON, GLADYS M. ZIMMERMANN, EDWIN H. JASMANN, FRANK SUTTON, GEORGE F. SCOTT and JOHN E. VICK,

Appellees.

Transcript of Record

Appeals from the United States District Court Northern District of California, Northern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—11-7-52

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the District Court of the United States for the Northern District of California, Northern Division

No. 12223

In the Matter of:

COASTAL PLYWOOD & TIMBER COMPANY, a Corporation,

Debtor.

ORDER APPOINTING TRUSTEE AND PRESCRIBING POWERS AND DUTIES

A petition by Karl M. Fickes, Carl E. Anderson and Leonhard G. Fuches for the reorganization of the above-named debtor under the provisions of Chapter X of the Bankruptcy Act having been duly filed herein, and the court after hearing having determined the issues presented by said petition and the answer thereto filed herein by said debtor, and having made its order on October 24, 1951, approving said petition, and directing that proceedings be had herein in accordance with the provisions of Chapter X of the Bankruptcy Act; and it appearing to the court from the allegations of the petition and of the said answer of said debtor, that the aggregate liabilities of said debtor, liquidated as to amount and not contingent as to liability, are in excess of $250,000.00, and it further appearing to the court that this is a proper case for the appointment of a trustee under the provisions of Chapter X of the Bankruptcy Act, and good cause appearing therefor;

It Is Hereby Ordered that Fred G. Stevenot, Esq., be and he is hereby appointed trustee of the estate of the above-named debtor, Coastal Plywood & Timber Company, a corporation, including all and singular the assets and estate of the above-named debtor of whatever kind and character and wherever situated, and the said trustee is hereby directed to give and file with the clerk of this court within ten days from and after the entry of this order, a surety company bond in the sum of $25,000.00, to be approved by the judge, and conditioned to be void if said trustee shall well and truly perform the duties of his office and duly and faithfully account to whom it may concern for all monies, properties and things whatsoever that may come into his hands by virtue of his office, and otherwise perform all things that he shall be directed by the court or judge to do; and said trustee, upon giving and filing said bond, shall be vested not only with all the powers conferred on a trustee under Chapter X of the Bankruptcy Act, but with all the powers of a receiver in equity not inconsistent with the provisions of Chapter X of the Bankruptcy Act, subject always to the direction and control of the judge;

It Is Further Hereby Ordered that the trustee so appointed shall within 15 days after the entry of this order cause a notice to be mailed to each of the creditors of the debtor at his last known post office address, to each of the stockholders of the debtor as the same may appear on the books of the debtor, to any indenture trustees, and to the Securi-

ties and Exchange Commission, and to cause publication of such notice to be made at least once a week for two successive weeks in a newspaper published and having general circulation in the County of Sonoma, State of California, to the effect that a hearing will be held before the judge at the courtroom of the above-entitled court located in the Post Office Building, 9th and I Streets, Sacramento, California, on the 3rd day of December, 1951, at 10 o'clock a.m., to hear any objections that might be made to the retention in office of said trustee;

It Is Further Hereby Ordered that the trustee appointed herein be and he is hereby authorized and directed, pending further order herein, to conduct and operate the business of the debtor and to manage, maintain and keep in proper condition and repair the assets, properties and business of the debtor, wherever situated; to employ and discharge, and to fix, subject to the approval of the court, the rate of compensation of all officers, managers, superintendents, agents and employees; to collect and receive the income, rents, revenues, tolls, issues and profits of said properties and business, and to collect all outstanding accounts and all dividends and interest or securities belonging to it;

It Is Further Hereby Ordered that said trustee be and he is hereby authorized, in his discretion, from time to time until further order herein, out of funds now or hereafter coming into his hands, to pay all necessary current expenses of the business of said debtor;

It Is Further Hereby Ordered that, until the

trustee appointed herein shall have qualified, the officers of the debtor may continue to sign checks drawn on any bank accounts of the debtor in the usual manner, and in the ordinary course of business;

It Is Further Hereby Ordered that, at the earliest date practicable and not later than December 15, 1951, the trustee shall prepare and file with the clerk of this court a report and statement of the assets and liabilities and financial condition of the debtor as of October 1, 1951, together with his report as to the operation of and the desirability of the continuance of the business of the debtor; the trustee shall mail a summary of said report and statement not later than December 15, 1951, to the creditors, stockholders, indenture trustees of the debtor, and to the Securities and Exchange Commission;

It Is Further Hereby Ordered that the trustee shall prepare and file with the clerk of this court a regular quarterly report and statement of the assets and liabilities of the debtor as of the close of business on the last day of the preceding quarter year, together with a summary statement of the revenues and expenses of the debtor for the preceding quarter year; the trustee shall also prepare and file an annual statement and report of the assets and liabilities of the debtor as of the close of business of the last day of the calendar year, together with a statement of the revenues and expenses of the debtor for the preceding calendar year and shall mail summaries of said annual

statement and report to the creditors, stockholders, indenture trustees, and to the Securities and Exchange Commission;

It Is Further Hereby Ordered that not later than December 15, 1951, the said trustee shall prepare and file in court a list of the creditors of each class, showing the amounts and character of their claims and securities, and, so far as known, the name and the post office address or place of business of each creditor; and a list of the debtor's stockholders of each class, showing the number and kind of shares registered in the name of each stockholder and the last known post office address or place of business of each stockholder;

It Is Further Hereby Ordered that, pending further order of this court, the trustee shall, and he is hereby authorized and empowered to institute or prosecute in any court or before any tribunal of competent jurisdiction all such suits and proceedings as may be necessary, in his judgment, for the recovery or proper protection of the properties or rights of the debtor, and, subject to the approval of the court, to make settlement of any thereof; and likewise to defend any actions, claims, proceedings or suits now pending against the debtor or which may hereafter be brought in any court or before any officer, department, commissioner or tribunal to which the trustee or debtor are or shall be a party.

It Is Further Hereby Ordered that the court reserves jurisdiction to enter any additional order or orders herein from time to time as to the judge

may seem proper, including any orders amplifying, extending, or otherwise limiting or modifying this order, as may be consistent with or in pursuance of the provisions of Chapter X of the Bankruptcy Act.

Dated this 1st day of November, 1951.

/s/ DAL M. LEMMON,
United States District Judge.

[Endorsed]: Filed November 1, 1951.

[Title of District Court and Cause.]

ORDER APPROVING RETENTION OF TRUSTEE IN OFFICE

At a Court of Bankruptcy, held in and for the Northern District of California, Northern Division, at Sacramento, on the 21st day of December, 1951, before Honorable Dal M. Lemmon, Judge of the United States District Court for the Northern District of California, Northern Division.

This cause having come on regularly to be heard on the 21st day of December, 1951, pursuant to the provisions of Section 161 of the Bankruptcy Act and pursuant to the provisions of the "Order Appointing Trustee and Prescribing Powers and Duties" entered herein on November 1, 1951, as amended; and upon the affidavit of Fred G. Stevenot, Trustee of the Debtor's Estate appointed by said Order, sworn to December 20, 1951, showing

the giving of notice as required by said Order; and said Trustee having filed the bond required of him by said Order; and said Trustee having shown to the satisfaction of the Court that he is qualified and disinterested as provided in Chapter X of the Bankruptcy Act; and full opportunity having been afforded to all persons to make objections to the retention in office of said Trustee, and no objections having been made; and due consideration having been given,

It Is Hereby Ordered:

1. That due and proper notice of said hearing has been given in accordance with the provisions of Section 161 of the Bankruptcy Act and of said "Order Appointing Trustee and Prescribing Powers and Duties," as amended;

2. That said Fred G. Stevenot, Trustee of the Debtor's Estate, is properly qualified and is disinterested as provided in Chapter X of the Bankruptcy Act, and that said Trustee be and he hereby is retained in office.

Done in Open Court this .... day of December, 1951.

/s/ DAL M. LEMMON,
United States District Judge.

[Endorsed]: Filed December 21, 1951.

[Title of District Court and Cause.]

PETITION FOR REINSTATEMENT OF EMPLOYEES WITH BACK PAY

The petition of J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott, and John E. Vick, respectfully represents:

I.

Each petitioner is and for two or more years last past has been a holder of one share of Class "A" capital stock of Coastal Plywood & Timber Company, a corporation organized and existing under the laws of the State of Nevada and having its office and principal place of business at Cloverdale, California, the Debtor in the proceedings; and prior to December 28, 1951, each petitioner had been regularly and continuously employed by said company in its plant at Cloverdale, California (except during plant or departmental shut-downs) for periods of time varying from two years and four months to five years and three months. Each petitioner resides in Cloverdale, California, and all of them, except Tallman and Gladys M. Zimmermann, owns or is now purchasing a home in said town; each petitioner, except Scott and Tallman, is a creditor of said company in amounts varying from $200.00 to $1,650.00 each and representing moneys loaned by them to said company. Petitioner

Norberg is president and a director, petitioner Barnhart is vice-president and a director, and petitioner Jackson is a director of said company.

II.

On December 28, 1951, without prior warning, petitioners were informed that they were "laid off" effective "as of the close of the work day, December 28, 1951," and each petitioner has been continuously unemployed by said company ever since. The said Cloverdale plant has continued its normal operations since December 28, 1951, and petitioners are informed and believe and upon such information and belief allege that each of them was in fact discharged as an employee of said company on December 28, 1951, and that each of them has since been replaced by another employee.

III.

Prior to the commencement of their respective employments by said company, each petitioner was a non-resident of Cloverdale, California, and each petitioner was induced to move his residence and to accept and continue employment with said company by its plan of identifying the management personnel and employees with Class "A" stock ownership, which plan is referred to in Articles IV and IX of the Amended Articles of Incorporation of said company, as amended September 9, 1947 (which are set forth on the reverse side of the stock certificate issued to and held by each petitioner), and also contained in Articles III, IV and

V of the Amended Bylaws of said company, as amended September 9, 1947.

Said provisions of the Articles and Bylaws were intended to afford each petitioner job security and job tenure as employees of said company and constitute valid and binding agreements between said company and each petitioner, in reliance upon which agreements each petitioner paid $2,500.00 or $3,500.00 for his or her share of stock, accepted employment with said company and has since continued to work as an employee of said company. The layoff or discharge of your petitioners on December 28, 1951, constituted a breach of and a violation of their contracts of employment with said company as contained in said provisions of its Articles and Bylaws.

Petitioners are informed and believe and upon such information and belief allege that the said layoff or discharge of petitioners was ordered by the manager of said Cloverdale plant, Martin F. Dyke, acting upon the prior authorization of Fred G. Stevenot, the Trustee appointed in these proceedings.

No reason for the said layoff or discharge, as the fact may be, has been given to any petitioner by said manager or said Trustee. Petitioners are informed and believe and upon such information and belief allege that on or about January 8, 1952, their attorney herein, Pembroke Gochnauer, called upon said Trustee, Fred G. Stevenot, and inquired as to whether (1) petitioners had been in fact laid off or discharged, and (2) as to the reason for such

action; and that said Trustee informed said attorney that petitioners had been discharged rather than laid off, and that he had authorized said Dyke to take such action because "their continued employment would not be for the best interests of the company"; and that on January 21, 1952, petitioners' said attorney held a conference with Messrs. Sterling Carr and Walter G. Olson, attorneys for said Trustee, and Webster Clark, of the firm of Rogers and Clark, attorneys for said Debtor, wherein petitioners' said attorney requested the said attorneys for the Trustee to ascertain the reason for the discharge of petitioners, and that thereafter to wit, on the 25th day of January, 1952, said Carr informed petitioners' said attorney that petitioners had been discharged because they were "trouble makers, and the company had gotten along much better without them." Petitioners have attempted through their said attorney to obtain the reinstatement of petitioners as employees of said company through said Stevenot, as Trustee, and later through said attorneys for said Stevenot, as Trustee, but without success, and the said attorneys for said Trustee have informed the said attorney for petitioners that petitioners should proceed to present their case to this court.

Prior to December 28, 1951, none of the petitioners had ever been warned or told by any representative of the management of said company that his or her work performance was improper or unsatisfactory, but, on the contrary, petitioners have been informed by their immediate supervisors

from time to time that their work performance was satisfactory. Petitioners know of no failure or refusal on the part of any one of them to properly perform each and every task assigned to them by the management of said company.

Petitioners are informed and believe and upon such information and belief allege that the reasons they were laid off or discharged on December 28, 1951, are as follows:

1. Petitioners in their capacities as stockholders and/or directors and/or officers of said company have from time to time since said Dyke became the manager of said company and particularly since March, 1950, advocated the payment of interest and installments on the loans to said company by the Bank of America and the RFC, which payments the said Dyke has failed to make.

2. From time to time since the said company, under the management of said Dyke, has failed to meet its financial obligations, petitioners have undertaken individually to find a purchaser or purchasers for their respective shares of stock.

3. Prior to July 1, 1951, petitioners, together with other shareholders, including Nels Sundeen and Dewey Jones, who are directors of said company, executed agreements with one L. M. Hampton, whereby petitioners have given said Hampton options to purchase their stock at a price of $7,000.00 per share. Petitioners actively and openly advocated the execution of said option agreements

with said Hampton by other shareholders and are in favor of amending the Articles of Incorporation of said company to permit the ultimate sale of their stock to Hampton and the director petitioners have taken steps toward that end. Said Dyke has at all times opposed the execution of said option agreements with said Hampton and has advised shareholders to refuse to execute the same.

4. As a result of the reorganization proceedings against said company and the orders of this court therein, the board of directors of said company and the officers of said company no longer have any supervision or control over the activities of said Dyke, including his action in laying off or discharging petitioners.

5. Petitioners have been discharged solely because of their activities in respect to their statutory corporate rights as shareholders and/or officers and/or directors of said corporation, and in this connection they aver: petitioners were the only employees of said company who were laid off or discharged as aforesaid. No employees who have not optioned their stock to said Hampton were included in said layoff or discharge. There are nine members of the board of directors of said company, of which directors Norberg, Barnhart, Jackson, Sundeen, and Dewey Jones constitute a majority, and petitioner directors Norberg, Barnhart and Jackson constitute the only majority directors who were then still in the employ of said company. The layoff or discharge of petitioners by

reason of (1) the position of petitioners Norberg and Barnhart, as president and vice-president, respectively, (2) of petitioners Norberg, Barnhart and Jackson, as members of the board of directors of said company, (3) of each petitioner as a member of the group of stockholders who have executed said option agreements with said Hampton, and (4) of each petitioner as an advocate of the execution of said option agreements with said Hampton and of the amendment of the Articles of said company to permit the ultimate sale of their stock to said Hampton, was intended and designed to discourage the shareholders of said company from hereafter approving any plan or plans for the reorganization of said company which may hereafter be proposed by or supported by said Hampton or petitioners and offered to the shareholders of said company for ratification.

6. Under the provisions of Article IX of the Articles of Incorporation of said company, as amended September 9, 1947, and as further amended on or about May 31, 1950, the board of directors of said company on behalf of said company is given the sole and exclusive option to purchase from any holder of stock "who shall, voluntarily or involuntarily, cease to be employed by the corporation by reason of discharge, retirement, resignation, disability or any other cause whatsoever, the shares of stock of such holder at the bona fide market value, as hereinafter defined, for a period of sixty days from such * * * cessation of employment," and said

layoff or discharge of petitioners may have been in furtherance of an attempt by the said Dyke to terminate petitioners' ownership of their shares in said company and to thereby deprive them of the advantages of their said option agreements with the said Hampton and to hinder and obstruct any plan of reorganization which may hereafter be proposed on the basis of the option agreements now held by the said Hampton.

7. Said Dyke, as manager, and said Stevenot, as Trustee, have caused petitioners to be laid off or discharged in reliance upon the assumption that an amendment to the bylaws of said company which was adopted on September 10, 1950, by a majority of 12 votes at a shareholders' meeting of said company, whereby the provisions of said Articles III, IV and V of said Bylaws were purportedly eliminated, had the effect of abrogating or impairing the said company's obligations under its contracts of employment with petitioners, whereas, in fact, and in truth, the purposes for said amendments were represented to the shareholders, including petitioners, to be necessary in order for the company to continue in effect its loans from the Bank of America and the RFC and were only intended (a) to give the manager greater power with respect to the day-to-day management of said company; (b) to permit the manager of said company to become a stockholder therein; and (c) to permit the establishment of higher rates of pay for the qualified employees of said company who were also

stockholders therein; that said amendments to the Bylaws were never represented to accomplish nor intended to accomplish an abrogation or impairment of the job security and tenure provisions of the contracts of employment between said company and your petitioners; and said job security and job tenure provisions of said contracts of employment could not lawfully be abrogated nor impaired by reason of the provisions of the Constitution of the United States and the Constitution of the State of California.

Wherefore, petitioners pray that each of your petitioners be reinstated as an employee of said company in the position held by him or her on the 28th day of December, 1951; that each petitioner be reimbursed in the amount heretofore or hereafter lost as a result of his or her layoff or discharge; that said company be ordered to cease and desist from discriminating against petitioners as to any term or condition of their future employment by reason of any action heretofore or hereafter taken by them or any of them as a shareholder, officer or director of said company in the exercise of their statutory corporate functions as such; and for such other and further relief as may be meet in the premises.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners.

Duly verified.

Receipt of Copy acknowledged.

[Endorsed]: Filed February 9, 1952.

[Title of District Court and Cause.]

MOTION OF FRED G. STEVENOT, TRUSTEE OF DEBTOR, ABOVE NAMED, TO DISMISS PETITION FOR REINSTATEMENT OF EMPLOYEES WITH BACK PAY AND, IN THE EVENT OF THE DENIAL OF ALL OF SAID MOTIONS, THE ANSWER OF SAID TRUSTEE TO SAID PETITION FOR REINSTATEMENT

Now comes Fred G. Stevenot, Trustee of Debtor above named, and moves the above-entitled Court to dismiss said Petition for Reinstatement of Employees With Back Pay, upon the following grounds, to wit:

1. The above-entitled Court has no jurisdiction of these proceedings for reinstatement or by reason of any of the things or facts set forth in said petition for reinstatement.

2. That said petition for reinstatement does not state facts sufficient to constitute a cause of action in favor of said petitioners or any of them and against said Trustee.

3. That said Fred G. Stevenot as such Trustee was not a party to said alleged contracts of employment set forth in said petition.

4. That if said contracts alleged in said petition were valid, the same, and each of them, were rejected by said Trustee on or about the 28th day of December, 1951.

5. The present proceeding and said petition for reinstatement are an attempt by said petitioners to specifically enforce the alleged contracts for personal services;

In support of said motions there is attached hereto and made a part hereof an affidavit of Fred G. Stevenot, Trustee in the above-entitled matter.

Said motions will be made upon this Motion and upon oral and documentary evidence to be introduced on the hearing of said motion and upon all the papers, records and files herein.

In the Event said motions to dismiss should all be denied by the above-entitled Court, and without in any manner waiving or withdrawing any of said grounds to dismiss and including them in the following answer, said Fred G. Stevenot as such Trustee files this his answer to said petition for reinstatement as follows, to wit:

I.

Said Trustee is without sufficient information or belief to enable him to answer the following portions of said petition for reinstatement and, basing his denial upon said ground, denies for said lack of information and belief the following portions of said petition for reinstatement:

(a) Beginning with the word "Each," page 1, line 24, down to and including the word "company," page 2, line 5;

(b) Commencing with the word "Prior," page 2, line 18, down to and including the word "company," page 3, line 1;

(c) Commencing with the word "Prior," page

3, line 32, down to and including the word "company," page 4, line 6;

(d) Commencing with the word "Petitioners," page 4, line 10, down to and including the word "same," page 4, line 30;

(e) Commencing with the word "No," page 5, line 8, down to and including the word "discharge," page 5, line 9.

II.

Said Respondent Trustee denies the following allegations of said petition for reinstatement and each and every part of each and every one of said allegations, to wit:

(a) Commencing with the word "and," page 2, line 29, down to and including the word "petitioner," page 2, line 31;

(b) Commencing with the word "The," page 3, line 2, down to and including the word "Bylaws," page 3, line 4;

(c) Commencing with the word "No," page 3, line 9, down to and including the word "Trustee," page 3, line 10;

(d) Commencing with the word "Petitioners," page 5, line 4, down to and including the word "corporation," page 5, line 6;

(e) Commencing with the last word "The," page 5, line 13, down to and including the word "ratification," page 5, line 25;

(f) Commencing with the word "may," page 6, line 2, down to and including the word "petitioners," page 6, line 14.

Said Trustee further denies that petitioners were

discharged for any or all of the reasons specified in Paragraph III of said petition.

And Further Answering said petition for reinstatement, said Trustee alleges:

That the alleged contract of employment contained in Articles III, IV and V of the Bylaws of the Debtor was, by Article VIII of said Bylaws, at all times subject to amendment by majority vote of the Class "A" Stockholders of the Debtor; that on the 10th day of September, 1950, said Bylaws were amended so as to eliminate therefrom all provisions for job security and job tenure of employees;

That at all times since the 10th day of September, 1950, Section 7 of Article III of said Bylaws has provided as follows, to wit:

> "Section 7. General Manager. The General Manager shall have general supervision and direction of the business and affairs of the corporation. Without limiting, except as otherwise herein provided, his other powers, he may employ, suspend and discharge such agents and employees of the corporation as he may from time to time deem necessary, and prescribe their duties, terms of employment and compensation."

That said Dyke referred to in said petition was on said 28th day of December, 1951, and now is, the General Manager of said Debtor and employed by this answering Trustee; that said notice of dismissal given said petitioners on said 28th day of

December, 1951, was given by said Dyke as said General Manager pursuant to and in accordance with said section of said Bylaws of said Debtor; That said notice was given with the prior approval and authorization of said Trustee.

Wherefore, said Trustee respectfully prays:

1. That said petition for reinstatement on file herein be denied.

2. For such other and further relief as to this Honorable Court shall seem fit and proper.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON.
By /s/ STERLING CARR,

/s/ STERLING CARR,
Attorneys for Said Trustee.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION TO DISMISS PETITION FOR REINSTATEMENT OF EMPLOYEES WITH BACK PAY

I.

That said petition for reinstatement does not state facts sufficient to constitute a cause of action.

See Section 7 of the Amended Bylaws passed in September, 1950, wherein the General Manager of Debtor is given full authority to employ and discharge at his discretion all employees.

Irrespective of the provisions of the original Articles of Incorporation and original Bylaws under which it is alleged that these alleged contracts

were made, the adoption of amended Section 7 governs the present situation and gives the General Manager full power and authority to employ and discharge.

It is apparent from the petition that the Trustee was no party to the alleged contracts. The Trustee, such as petitioner, goes into possession of the assets of the Debtor as an officer of the Court and freed of any obligation to perform those executory contracts which he elects to reject.

II.

Said Trustee by the dismissal of petitioners on December 28, 1951, elected to reject such alleged executory contracts.

The order appointing the Trustee herein granted him full power to manage and operate the business of said Debtor with all powers conferred upon a trustee both under Chapter X of the Bankruptcy Act, as well as with all of the powers of a receiver in equity.

> Bankruptcy Act, Sec. 202; also Sec. 343;
> Philadelphia Company v. Dipple,
> 312 U.S. 168, 61 S.Ct. 538.

At page 541, the court stated:

> "Notwithstanding the fact that Sec. 77B gives no specific authority to trustees in reorganization to reject burdensome leases or contracts, it is well settled that they have that right and are accorded a reasonable time within which to exercise it."
>
> 11 U.S.C.A., Sections 511-616, and Suppl., p. 9.

III.

The present petition is an attempt on behalf of petitioners to specifically enforce personal service contracts which cannot be done either by direct decree of this Court or by injunction proceedings.

Civil Code, State of California, Sec. 3390, Subdvs. 1 and 2, providing as follows:

The following obligations cannot be specifically enforced:

1. An obligation to render personal service;

2. An obligation to employ another in personal service * * *.

Poultry Producers, etc., v. Barlow,
189 Cal. 278, Subdv. (8);

Bethlehem, etc., vs. Christie,
105 F. (2) 933,

holding:

> "Even though the discharge of an agent is a breach of contract which gives him a right of action, the court will not restore him to position."

Bach v. Friden, etc.,
155 F. (2d) 361, Subdv. 9.

A decree in a case of this kind would require constant supervision by this Court.

IV.

The rights of the parties to these alleged con-

tracts are to be governed by the laws of the State of California.

Urban Properties v. Benson,
116 F. (2d) 321, Subdv. (1) (Ninth Cir.).

Respectfully submitted,

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,
By /s/ STERLING CARR.

/s/ STERLING CARR,
Attorneys for Trustee.

[Endorsed]: Filed February 11, 1952.

[Title of District Court and Cause.]

INTERLOCUTORY ORDER REINSTATING EMPLOYEES WITH BACK PAY

This matter having come on for hearing on February 11, 1952, before the above-entitled Court, Honorable George B. Harris presiding, on the verified petition of petitioners and the answer of debtor's trustee thereto and the motion of the trustee to dismiss said petition, Pembroke Gochnauer, Esq., appearing as counsel for petitioners, Messrs. Rogers and Clark by Webster V. Clark, Esq., appearing as counsel for the debtor, and Sterling Carr, Esq., and Messrs. Orrick, Dahlquist, Neff & Herrington by George Herrington, Esq., and Walter G. Olson, Esq., appearang as counsel for the debtor's trustee, and evidence, oral and documentary, having been produced by the parties

on the 11th, 12th, 13th and 14th days of February, 1952, and the Court having heard and considered all the evidence and the arguments of counsel and having denied the trustee's motion to dismiss said petition, and being fully advised in the premises, and good cause appearing therefor:

It is hereby Ordered that the petitioners, J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott and John E. Vick, and each of them, be and they are hereby reinstated in the jobs held by them, respectively, on December 27, 1951, at the Cloverdale plant of the debtor, Coastal Plywood & Timber Company, or restored to substantially equivalent employment by said debtor at said plant at equivalent rates of pay, pending the further order of this Court.

It is further Ordered that the debtor's trustee shall forthwith reimburse each of said petitioners from the debtor's estate for all wages lost by them, respectively, on and after December 28, 1951, by reason of the layoff or discharge of said petitioners on or about said date, at the rates of pay then being received by them, respectively.

Dated February 15, 1952.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed February 15, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM INTERLOCUTORY ORDER REINSTATING EMPLOYEES WITH BACK PAY

To the Clerk of the Above-Entitled Court, and to J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott, and John E. Vick, and to Pembroke Gochnauer, Esq., Their Attorney, and to Messrs. Rogers and Clark, Appearing as Counsel for Debtor:

You, and each of you, Will Please Take Notice that Fred G. Stevenot, the duly and regularly appointed, qualified and acting Trustee of the property and assets of Debtor above named, hereby appeals to the Court of Appeals of the Ninth Circuit from that certain "Interlocutory Order Reinstating Employees With Back Pay" entered in the above-entitled proceedings on the 15th day of February, 1952, the Honorable George B. Harris presiding.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,
/s/ STERLING CARR,

By /s/ STERLING CARR,
Attorneys for Trustee.

[Endorsed]: Filed February 25, 1952.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Now comes Fred G. Stevenot, Trustee of Debtor, above named, and Appellant, above named, and sets forth a statement of the points upon which appellant intends to rely on appeal, as follows:

1. The District Court erred in denying appellant's motions to dismiss the petition for reinstatement of employees with back pay.

2. The District Court erred in including in said order, last above referred to, the following provision:

> "It is further Ordered that the debtor's trustee shall forthwith reimburse each of said petitioners from the debtor's estate for all wages lost by them, respectively, on and after December 28, 1951, by reason of the layoff or discharge of said petitioners on or about said date, at the rates of pay then being received by them, respectively."

3. The District Court erred in granting the petition of petitioners for specific performance of their contracts for personal services.

4. The District Court erred in not holding that the original contract of employment contained on the back of the stock certificate issued to each of petitioners was amended and changed by the

Amended Bylaws adopted by Debtor on September 10, 1950.

5. The District Court erred in holding that Section 7 of Article III of said Bylaws, duly and regularly adopted by the said Stockholders of said Debtor on the 10th day of September, 1950, and reading as follows to wit:

> "Section 7. General Manager. The General Manager shall have general supervision and direction of the business and affairs of the corporation. Without limiting, except as otherwise herein provided, his other powers, he may employ, suspend and discharge such agents and employees of the corporation as he may from time to time deem necessary, and prescribe their duties, terms of employment and compensation,"

did not give to and empower said General Manager of said Debtor full and uncontrolled right, power and authority to employ and discharge agents and employees of said Debtor at any time and for any reason or purpose whatsoever and which to him seemed best.

6. The District Court erred in not holding that the failure of petitioners to offer their stock to Debtor as required by its Articles of Incorporation and/or Bylaws before granting to a third party an option to purchase the same constituted a breach of contract with Debtor which entitled Debtor and appellant herein to discharge petitioners and each

of them from their and each of their employment with Debtor.

7. The District Court erred in substituting its judgment for that of the Trustee (appellant herein) and his General Manager in the ordinary operations of Debtor.

Dated this 7th day of March, 1952.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,

/s/ STERLING CARR,
Attorneys for Said Trustee.

Receipt of Copy acknowledged.

[Endorsed]: Filed March 7, 1952.

[Title of District Court and Cause.]

MOTION TO REQUIRE TRUSTEE AND APPELLANT TO FILE TRANSCRIPT OF RECORD AND SUPERSEDEAS BOND

Petitioners and appellees, J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott and John E. Vick, move the Court as follows:

1. For an order requiring Trustee and Appellant pursuant to Rule 75 (b) of the Federal Rules of Civil Procedure to file a transcript of the entire

record, evidence and proceedings of the trial in this matter, as set forth in "Designation by Appellees of Additional Portions of the Record, Proceedings and Evidence to Be Included in the Record on Appeal" filed herein on or about March 17, 1952.

2. To file a supersedeas bond as required by Rule 73 (d) of the Federal Rules of Civil Procedure.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners and Appellees.

NOTICE OF MOTION

To Orrick, Dahlquist, Neff & Herrington, and Sterling Carr, Attorneys for Trustee and Appellant; Rogers and Clark, Attorneys for Debtor:

Please Take Notice that petitioners will bring the above motion on for hearing before this Court in the courtroom of said Court, Room 276, Post Office Building, Seventh and Mission Streets, San Francisco, California, on Friday, the 21st day of March, 1952, at 3:00 o'clock p.m. of that day or as soon thereafter as counsel can be heard.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners and Appellees.

Stipulation

It Is Hereby Stipulated by and between the parties hereto that the above motion may be heard as above noticed.

Dated San Francisco, California, this 20th day of March, 1952.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners and Appellees.

/s/ STERLING CARR,

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

By /s/ STERLING CARR,
Attorneys for Trustee and Appellant.

ROGERS AND CLARK,

By /s/ WEBSTER V. CLARK,
Attorneys for Debtor.

So Ordered:

/s/ GEORGE B. HARRIS,
Judge United States District Court.

Points and Authorities in Support of Motion

1. Filing of transcript.

   Rule 75 (b), Federal Rules of Civil Procedure;

   Sablette v. Servel, Inc. (1942, C.C.A. 8), 124 F. 2nd 516.

2. Supersedeas bond.

Rule 73 (d), Federal Rules of Civil Procedure;

Pacific Coast Casualty Co. v. Harvey (1918, C.C.A. 9), 250 F. 952.

Respectfully submitted,

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners and Appellees.

[Endorsed]: Filed March 20, 1952.

In the District Court of the United States for the Northern District of California, Northern Division

No. 12223

In Proceedings for the Reorganization of a Corporation.

In the Matter of
COASTAL PLYWOOD & TIMBER COMPANY, a Corporation,

Debtor.

ORDER REINSTATING EMPLOYEES WITH BACK PAY

The verified petition of J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sut-

ton, George F. Scott and John E. Vick for reinstatement in their employment by the Debtor, Coastal Plywood & Timber Company, having come on regularly for hearing before the above-entitled Court, the Honorable George B. Harris presiding, on the 11th, 12th, 13th, 14th and 15th days of February, 1952, on said verified petition and the answer of the Debtor's trustee thereto and the motion of said trustee to dismiss said petition and upon all the other papers, records and files in the above-entitled proceeding and petitioners appearing by their counsel, Pembroke Gochnauer, Esq., the Debtor appearing by its counsel, Messrs. Rogers and Clark, by Webster V. Clark, Esq., and said trustee appearing by his counsel, Sterling Carr, Esq., and Messrs. Orrick, Dahlquist, Neff & Herrington, by George Herrington, Esq., and Walter G. Olson, Esq., and evidence oral and documentary, having been submitted to the Court in support of said petition and in opposition thereto, and the Court having heard and duly considered all the evidence and the arguments of counsel and having denied the trustee's motion to dismiss said petition and being fully advised in the premises, the Court now makes the following

Findings of Fact

1. The Debtor, Coastal Plywood & Timber Company, is, and continuously at all times herein mentioned has been, a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its office and principal place of business at Cloverdale, California.

2. Each of the petitioners is now and for two or more years last past has been, the holder of one share of the outstanding capital stock of said Debtor for which he or she paid the sum of $2,500.00. Prior to December 28, 1951, each of said petitioners has been regularly and continuously employed by the Debtor company at its plant at Cloverdale, California, except during plant or departmental shutdowns, for periods of time ranging from two years and four months to five years and three months. Each of said petitioners, except the petitioners Scott and Tallmann, is a creditor of the Debtor company in amounts ranging from $200.00 to $1,650.00, representing moneys loaned by them to said company. The petitioner Norberg is the president and a director of the Debtor Company; the petitioner Barnhart is its vice-president and a director, and the petitioner Jackson is a director of the Debtor company.

3. At the time each of the petitioners purchased his or her share of stock in the Debtor corporation said stock constituted Class "A" stock of said company and its articles of incorporation contained the following provisions, to wit:

"Article IX

"In view of the particular nature of this corporation and the contribution to the success thereof expected to ensue from the plan of identifying the management personnel and employees with Class 'A' stock ownership, no share of Class 'A' stock may be issued except as follows:

"One share of such stock only can be issued to or owned by any stockholder, and such stockholder must be an active employee, or a person acceptable to the Board of Directors as a future active employee of the Corporation."

It is further provided that:

"(a) No owner of Class 'A' stock may sell, transfer or assign his share until and unless he first gives to the Corporation's President or Secretary written notice of his intention to sell, transfer or assign, setting forth in such notice the number of the certificate therefor and the name and residence of the person who is the holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors shall, for a period of 60 days after receipt of such written notice, have the sole and exclusive option of purchasing said share at the bona fide market value, as hereinafter defined. Payment for such share may be made by the Board of Directors by depositing said bona fide market value to the credit of such shareholder in any National Bank in Cloverdale, California, or San Francisco, California, to be paid to such shareholder by said bank upon the surrender of the certificate for said share of Class 'A' stock properly endorsed; the Board shall give written notice of such deposit to the shareholder (by registered mail addressed to the person and address given in the stockholder's notice).

"(b) Any person acquiring through will, de-

scent, or by conveyance to take effect at death, or sale in the administration of any estate, any share of Class 'A' stock of the Corporation shall be bound to give written notice of such acquisition to the President or Secretary of the Corporation, setting forth in such notice the number of the certificate, the name of the registered holder, and the name and residence address of the person acquiring such share, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors, for a period of 60 days after receipt of such notice, shall have an exclusive option of purchasing such share at the bona fide market value, as hereinafter defined. The person so acquiring said share shall be notified of the exercise of said option and paid therefor in the manner prescribed in sub-paragraph (a).

"(c) The purchaser of any share of Class 'A' stock sold on execution or any other sale by operation of, or under authority of, law and the pledgee of any share of Class 'A' stock before bringing any suit, action, or proceeding or doing any act to foreclose his pledge shall first deliver to the President or Secretary of the Corporation written notice of such purchase or intention to foreclose, designating the number of the certificate and the name and residence address of the pledgee or the present holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors shall have the sole and exclusive option, for a period

of 60 days after receipt of such notice, to purchase said shares at the bona fide market value, as hereinafter defined. Notice of the exercise of said option and payment to be accomplished in the manner herein above prescribed in subparagraph (a).

"(d) On behalf of the Corporation the Board of Directors shall have the sole and exclusive option to purchase from any holder of Class 'A' stock who shall fail to report for work within sixty (60) days after the mailing to him, by registered mail, of written call to report for work, or who shall voluntarily or involuntarily cease to be employed by the Corporation by reason of discharge, retirement, resignation, disability or any other reason whatsoever, the share of stock of such holder at the bona fide market value, as hereinafter defined, for a period of 60 days from such failure to report or such cessation of employment. Notice of the exercise of said option and payment to be accomplished in the manner prescribed in subparagraph (a).

"The specific provisions governing discharge, retirement, or disability shall be set forth in the By-laws.

"(e) Shares of Class 'A' stock shall give to the holder thereof no power to vote thereon and no right to dividends declared thereon subsequent to notification by the Corporation of its exercise of option to purchase under the terms and conditions defined in subparagraphs (a), (b), (c) and (d) above. Upon a stockholder's refusal to surrender his certificate, the Corporation, after making proper deposit of payment, may cancel such certificate.

"(f) Shares of Class 'A' stock acquired by the Corporation under the provisions of subparagraphs (a), (b), (c) and (d) above may be resold only to persons who are or agree to become employees of the Corporation who own no Class 'A' stock, limiting such resales to one share of Class 'A' stock per employee.

"(g) Bona fide market value is defined as follows:

"(1) The Board of Directors and the person desiring to sell or foreclose may agree upon the bona fide market value at which the Corporation shall repurchase the stock.

"(2) In the event said bona fide market value is not agreed upon it shall be determined by an appraisal made by a majority of three appraisers who shall be selected, one by any owner, holder or pledgee referred to in (a), (b), (c) and (d) above, one by the Board of Directors, and one by the two appraisers thus selected. If the two appraisers so selected shall not, within twenty days of their selection, agree upon the third appraiser, either party may apply, upon five days' written notice to the other, to any judge of any court of general jurisdiction in Sonoma or Mendocino counties, California, for the appointment of such third appraiser. The three appraisers so selected shall, within 20 days after the third appraiser is selected, appraise such shares and give written notice thereof to both parties, any expenses of appraisal to be paid one-half by each party. The Corporation's 60-day option to purchase,

as set forth in (a), (b), (c) and (d) above, shall be extended by the time required for selection of appraisers and appraisement.

"(3) Bona fide market value shall be determined as of the date the Corporation receives the written notice referred to in subparagraphs (a), (b) and (c) above, or sends the written notice provided for in subparagraph (d) above.

"(h) If the Corporation fails to exercise or waives its option to purchase said stock as provided for in this Article IX, said stock may be sold or transferred at any price agreed upon between the holder and the transferee, provided only, that such transferee is an active employee holding no Class 'A' stock or is a person acceptable to the Board of Directors as a future active employee of the Corporation."

At all times herein mentioned the articles of incorporation of the Debtor corporation have continued to include the foregoing provisions and do now include all of said provisions with the exception that the designation of the shares subject thereto as Class "A" stock has been eliminated by amendment and all the outstanding capital stock of said Debtor including that held by petitioners is now subject to said provisions.

At the time each of said petitioners purchased his or her share of Class "A" stock in the Debtor corporation its bylaws contained the following provisions, to wit:

"Article IV

"Wages

"Section 1. An employed stockholder holding Class 'A' common stock shall be entitled before the payment of dividends on Class 'A' common stock and Class 'B' common stock to withdraw and be paid his wages, not in excess of the following sums:

"(a) Every employed Class 'A' stockholder, regardless of whether he begins his employment before or after the sawmill shall have attained production, shall work for a 'beginning period' at the rate of One and 51/100 Dollars ($1.51) per hour. The length of the 'beginning period' shall be at least nine (9) months, or the number of months from September 15, 1946, until the sawmill shall have attained production, if that be more than nine (9) months.

"(b) After the expiration of the 'beginning period,' an employed Class 'A' stockholder may be paid not in excess of Two and 23/100 Dollars ($2.23) per hour, such increases over the average going wage of the industry being considered an incentive wage predicated on the recognition that the gross average output per man of employees of Class 'A' stockholders' group will exceed the average per man output of the industry; provided, however, that if the average straight time hourly rate of pay in these respective noncooperative industries in Washington and Oregon falls below or rises above the average straight time hourly rate of One and 51/100 Dollars ($1.51) per hour now prevailing, the hourly rate

then payable, both during the beginning period and thereafter, shall be reduced or increased in the same amount, penny for penny, it being understood that no adjustment in said hourly rate shall be made except in the event of a full 2½c per hour change upward or downward, in the average straight time hourly rate.

"Section 2. Vacations:

"(a) Each employee, after one year of continuous employment, shall be entitled each year to one (1) week's vacation with pay (based on the 40-hour week at the employee's straight time hourly rate in effect on the pay day immediately preceding the date fixed as the start of the vacation), or, at the discretion of the Board of Directors, a possible two (2) weeks' vacation with pay. The Board of Directors may grant longer vacations than two (2) weeks, upon such terms and conditions as may seem advisable to it upon concurrence of a majority of the directors elected by the Class 'B' stock voting separately.

"(b) To be eligible for a vacation with pay the employee must have been in the continuous employment of the Company for one year prior to June 1st of the year during which the vacation takes place and must be on the payroll at the time his vacation commences.

"(c) 'Continuous employment' for purposes of vacation is defined as employment uninterrupted by:

"(1) Absence due to discharge.

"(2) Leave of absence granted by the Company in excess of thirteen (13) weeks.

"(3) Involuntary layoffs totaling in excess of thirteen (13) weeks due to shutdowns for causes over which the Company has no control. Working on any one day of the calendar week shall be counted as 'continuous employment' during that week.

"However, time lost as a result of an accident, as recognized by California workmen's compensation laws, rules, and regulations, suffered during the course of employment, and the vacation period shall be considered as time worked.

"(d) Time for taking vacations shall be determined by the General Manager, whose determination shall be final.

"(e) Any other details concerning vacations shall be determined by resolution of the Board of Directors.

"Article V.

"Employee Relations

"Section 1. Suspension:

"The general manager may for cause suspend any employee without pay, for a period of not more than fifteen (15) days, and with the approval of a majority of the Board of Directors elected by the Class 'A' stockholders, may for cause suspend any employee without pay for a period of not more than thirty (30) days. The employee suspended may appeal his suspension to the Board of Directors within forty-eight (48) hours, if he feels that he has been suspended without sufficient cause. If his appeal is sustained, he will be reinstated and reimbursed for time lost.

"Section 2. Discharge:

"A Class 'A' stockholder employee may not be discharged except with the approval of the majority of the members of the Board of Directors who are elected by the Class 'A' stockholders. If the Class 'A' stockholder so discharged is unwilling to accept the decision of said Directors, he may request in writing of the President, Vice-President or Secretary, within ten (10) days of such decision, that his discharge be reviewed at a meeting of the Class 'A' stockholders called for the purpose in accordance with the provisions of the Bylaws. Unless a majority of the stockholders voting at such meeting approves such discharge, it shall not be effective.

"Section 3. Disability:

"Disability resulting in termination of employment is defined as that condition existing when an employee-Class 'A' stockholder has become physically or mentally disabled to the extent that he is permanently unable to work and when such disability has been determined by a majority of a board of three (3) doctors chosen one by the employee, one by the General Manager and one by the two thus chosen. The decision of this board shall be submitted in writing to the General Manager, and shall be final.

"Section 4. Retirement:

"Within one (1) year after both the plywood plant and the sawmill are in production, the Board of Directors shall adopt a retirement plan satisfac-

tory to the Class 'A' stockholders for all or part of the employees, upon such terms and conditions as seem advisable, provided such plan is approved by a separate vote of a majority of the Directors elected by the Class 'B' stockholders.

"Section 5. Duty in Armed Services:

"Any employee-stockholder answering the call to duty in the Army, Navy or any of their direct branches during any period of national emergency, either for training or for service, shall be granted leave of absence and retain all rights and privileges as an employee-stockholder including dividend and voting rights but shall not be entitled to wages during such absence. Said employee-stockholder shall report as soon as possible to the Company upon completion of his service."

Said provisions remained part of the bylaws of the Debtor company continuously until on or about September 10, 1950, when they were eliminated by amendment as hereinafter set forth.

4. The aforesaid provisions of the articles of incorporation and bylaws of the Debtor corporation, Coastal Plywood and Timber Company, were, and each of them was, in full force and effect at the time each of the petitioners herein purchased his or her share of stock in said company and said provisions were intended to afford job security and job tenure to each of the petitioners as an employee of said company and to constitute a valid and enforceable agreement between said company and each of the petitioners. In reliance upon said provisions and

agreement each petitioner paid the sum of $2,500.00 to the Debtor corporation for his or her share of stock and accepted employment by the Debtor at its plant at Cloverdale, California, and has since continued to work as an employee of said company until on or about December 28, 1951, when the employment of each of the petitioners was terminated by the Debtor's trustee under the circumstances hereinafter found. Prior to purchasing said stock and accepting said employment each of the petitioners resided elsewhere than Cloverdale, California; and in reliance upon said provisions and said agreement and upon accepting said employment, each of the petitioners was induced to and did move his or her residence to Cloverdale where all of them now reside and each petitioner, except the petitioners Tallman and Gladys M. Zimmermann, has purchased or is now purchasing a home in Cloverdale in reliance upon his continued employment by the Debtor company pursuant to said provisions and agreement, as aforesaid.

5. Subsequently on or about September 10, 1950, the bylaws of the Debtor company were amended by vote of a majority of its shareholders, as authorized therein, to, among other things, eliminate the aforesaid provisions relating to job security and job tenure which had theretofore constituted part of said bylaws and to include the following further provision, to wit:

> "Section 7. General Manager: The General Manager shall have general supervision and

direction of the business and affairs of the corporation. Without limiting, except as otherwise herein provided, his other powers, he may employ, suspend and discharge such agents and employees of the corporation as he may from time to time deem necessary, and prescribe their duties, terms of employment and compensation."

At the time the above-mentioned amendments to the bylaws were adopted on or about September 10, 1950, as aforesaid, the Debtor corporation was indebted to the Bank of America, National Trust and Savings Association, and the Reconstruction Finance Corporation in the approximate amount of $2,600,000, secured by mortgages on substantially all its property and assets; and said amendments were unequivocally demanded and required by said bank and the Reconstruction Finance Corporation as the absolute condition to the continuance of said loans and all future financing and were adopted solely for the purpose of complying with the demands and requirements of the lending institutions and were not intended to in any manner impair or abrogate the job security and job tenure provisions of the original agreements between the Debtor company and petitioners. Said agreements constituted by the Debtor's articles of incorporation and bylaws as they existed at the time petitioners purchased their said stock were not impaired or abrogated in any respect by said amendments.

6. On or about November 1, 1951, by order of

the above-entitled Court duly made and entered on that day, Fred G. Stevenot was appointed trustee of the estate of said Debtor, Coastal Plywood and Timber Company, in the above-entitled proceeding and was authorized and directed, among other things, to conduct and operate the business of said Debtor and to employ and discharge, and to fix, subject to the approval of the Court, the rate of compensation of all officers, managers, superintendents, agents and employees. Thereafter, on or about November 6, 1951, the said Stevenot duly qualified as such trustee and ever since has been, and now is, the duly appointed, qualified and acting trustee of the estate of said Debtor in said proceedings. Thereupon, pursuant to said authority and the further order of the Court duly made and entered herein on December 5, 1951, the said Stevenot as such trustee employed one Martin Dyke as manager of the business operations of the Debtor for the purpose, among other things, of managing the continued operation of the Debtor's plant and lumbering operations at Cloverdale, where all the petitioners were then employed as aforesaid. Prior to such employment by the trustee, the said Dyke had held the position of general manager of the Debtor company since October, 1949, during all of which time the petitioners were continuously employed by said company.

7. On or about December 20, 1951, the said Stevenot as such trustee rendered and filed his sworn report to the Court in said proceedings representing, among other things, that he had retained in

the employ of the Debtor company such employees in addition to the said Dyke as he, the said Stevenot, deemed necessary to continue the profitable operation of the business of said company. At said time all the petitioners were regularly employed by said company.

8. On or about December 28, 1951, without any prior notice or warning whatsoever to petitioners, or any of them, the said Dyke as manager of the Debtor's business employed by the Court's trustee as aforesaid, laid off each of the petitioners effective as of the close of the work day December 28, 1951; and thereafter, to wit, on or about February 1, 1952, upon the service on counsel for the trustee of the petition for reinstatement filed herein by said petitioners, the said Dyke finally determined that petitioners, and each of them, were permanently discharged from all further employment by said company solely by reason of their having instituted said petition for redress by the Court. Petitioners, and each of them, remained unemployed by the Debtor company until they were reinstated by the hereinafter mentioned interlocutory order of this Court made and entered herein on February 15, 1952. Meanwhile normal operations continued at the Debtor's Cloverdale plant from and after December 28, 1951, and the said Dyke immediately replaced each of the petitioners with another employee.

9. Prior to being laid off on December 28, 1951, as aforesaid, none of the petitioners had ever been warned or told by the said Dyke or by any other

representative of the management of the Debtor company that his or her work performance was unsatisfactory or undesirable, but on the contrary certain of the petitioners had been informed from time to time by their immediate supervisors that their work was entirely satisfactory. No reason was given to any of the petitioners for said layoff or discharge and no benefit whatever resulted to the Debtor's business or estate therefrom. Although the discharge of petitioners by the said Dyke was approved and authorized by the said Stevenot as the Court's trustee, nevertheless no application was made to the Court for specific authority to layoff or discharge petitioners, or any of them, and they were so laid off and discharged without specific authorization by the Court. None of the petitioners was guilty of any misconduct nor any failure to properly perform his or her job duties in any respect whatsoever and the aforesaid layoff and discharge of petitioners by the said Dyke was as to each of them wholly without cause or sufficient reason or justification in the proper conduct and management of the Debtor's business and estate. Said layoff and discharge was arbitrary and capricious as to each and all of said petitioners and was in violation of their rights and contrary to sound industrial relations practice and was due solely to the fact that the said Dyke personally opposed petitioners in the exercise of their statutory corporate rights as shareholders and/or officers and/or directors of the Debtor corporation in matters totally unrelated to the proper

administration and preservation of the Debtor's business and estate by the Court's trustee and having no effect whatsoever thereon; and the reinstatement of petitioners in their respective employments or in substantially equivalent employment will have no adverse or harmful effect whatever upon the proper administration and preservation of the Debtor's business and estate by the Court's trustee but on the contrary such reinstatement with restitution of the earnings lost by petitioners by reason of said wrongful layoff and discharge will be for the best interests of the Debtor company.

10. All of the petitioners were reinstated as employees of the Debtor company, or offered reinstatement as employees of the Debtor company, on February 18, 1952. No part of the wages lost by petitioners, or any of them, by reason of said layoff or discharge has been paid to them. Petitioners made diligent efforts to obtain other employment during the period of said layoff or discharge, which resulted in the employment of six of said petitioners in other work during a part of said period. Each of the petitioners received unemployment compensation under the laws of the State of California during the period that each of them was unable to obtain employment. By stipulation made in open Court between counsel for the respective parties, the amounts of wages lost by petitioners, respectively, on and after December 28, 1951, by reason of said layoff or discharge are:

Petitioner—	Amount
J. W. Norberg	$370.54
Nils G. Matson	350.74
Merritt W. Tallman	486.92
Milo F. Barnhart	385.15
Roland C. Zimmermann	501.45
Floyd C. Jackson	422.60
Gladys M. Zimmermann	419.22
Edwin H. Jasmann	495.16
Frank Sutton	473.88
George F. Scott	508.60
John E. Vick	473.36
Total	$4,887.62

And as its

Conclusions of Law

from the foregoing findings of fact, the Court concludes that:

1. Petitioners, and each of them, are entitled to reinstatement in the jobs held by them, respectively, on December 27, 1951, at the Cloverdale plant of said Debtor, Coastal Plywood and Timber Company, or restored to substantially equivalent employment by said trustee for said Debtor at said plant at equivalent rates of pay; and

2. Petitioners, and each of them, are entitled to reimbursement from the Debtor's estate for wages lost by them, respectively, on or after December 28,

1951, in the amounts as aforesaid, by reason of the layoff or discharge of said petitioners on or about said date.

The Court having heretofore on February 15, 1952, made and entered its interlocutory order to the foregoing effect,

Now Therefore, in accordance with said interlocutory order and the foregoing findings of fact and conclusions of law, it is hereby Ordered, Adjudged and Decreed that

1. The Petitioners, J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott and John E. Vick, and each of them, be, and they are hereby reinstated in the jobs held by them, respectively, on December 27, 1951, at the Cloverdale plant of the Debtor, Coastal Plywood and Timber Company, or restored to substantially equivalent employment at said plant at equivalent rates of pay; and

It is further Ordered, Adjudged and Decreed that the Debtor's trustee shall forthwith reimburse each of said petitioners from the Debtor's estate for wages lost by them, respectively, on and after December 28, 1951, by reason of the layoff or discharge of said petitioners on or about said date, in the following amounts, with interest at the rate of seven per cent (7%) per annum since February 18, 1952:

Petitioner—	Amount
J. W. Norberg	$370.54
Nils G. Matson	350.74
Merritt W. Tallman	486.92
Milo F. Barnhart	385.15
Roland C. Zimmermann	501.45
Floyd C. Jackson	422.60
Gladys M. Zimmermann	419.22
Edwin H. Jasmann	495.16
Frank Sutton	473.88
George F. Scott	508.60
John E. Vick	473.36
Total	$4,887.62

Dated: May 12, 1952.

/s/ GEORGE B. HARRIS,
United States District Judge.

Not approved as to form, as provided in Rule 5(d), on the ground that the so-called Findings of Fact include erroneous conclusions of law.

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

/s/ STERLING CARR,
Attorneys for Trustee.

Approved as to form, as provided in Rule 5(d).

ROGERS AND CLARK,
Attorneys for Debtor.

Lodged March 17, 1952.

[Endorsed]: Filed May 13, 1952.

[Title of District Court and Cause.]

ORDER REQUIRING TRUSTEE AND APPELLANT TO FILE SUPERSEDEAS BOND

This matter having come on regularly for hearing on the 21st day of March, 1952, and further hearing having been had on the 1st day of May, 1952, before the above-entitled court, Honorable George B. Harris presiding, on motion of Petitioners J. W. Norberg, et al., for an order requiring the Trustee and Appellant to file a supersedeas bond as required by Rule 73(d) of the Federal Rules of Civil Procedure, Pembroke Gochnauer, Esquire, appearing as attorney for Petitioners, Messrs. Rogers and Clark, by Webster V. Clark, Esquire, appearing as counsel for Debtor, and Sterling Carr, Esquire, and Messrs. Orrick, Dahlquist, Neff & Herrington, by George Herrington, Esquire and W. W. Olson, Esquire, appearing as counsel for the debtors' Trustee;

And it appearing that the words "all wages lost" as they appear in The Interlocutory Order Reinstating Employees with back pay, made and entered herein on or about February 15, 1952, and in any final order hereafter made and entered herein, are, and shall be construed to be, the amounts so indicated below:

Petitioner—	Amount
J. W. Norberg	$370.54
Nils G. Matson	350.74
Merritt W. Tallman	486.92
Milo F. Barnhart	385.15
Roland C. Zimmermann	501.45
Floyd C. Jackson	422.60
Gladys M. Zimmermann	419.22
Edwin H. Jasmann	495.16
Frank Sutton	473.88
George F. Scott	508.60
John E. Vick	473.36
Total	$4,887.62

And it appearing that Debtor's Trustee has not reimbursed all or any of the said Petitioners for all or any wages lost in compliance with said Order, and that said Order has not been stayed and is in full force and effect, and that said Trustee has filed notice of appeal to the United States Court of Appeals for the Ninth Circuit from said Order and his counsel has expressed an intention of so appealing from any final judgment hereinafter entered herein, and good cause appearing therefor,

It Is Hereby Ordered, pursuant to Rule 75(d) of the Federal Rules of Civil Procedure that Debtor's Trustee is hereby required to cause to be prepared and filed with this court a supersedeas bond in the sum of Ten Thousand ($10,000.00) Dollars, with surety or sureties satisfactory to this court, conditioned for the reimbursement from the Debtor's estate for all wages lost by the Petitioners and each

of them, in satisfaction of the judgment herein in full, together with costs, interest, and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the United States Circuit Court of Appeals for the Ninth Circuit may adjudge and award.

Dated: May 12, 1952.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed May 13, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM ORDER REQUIRING TRUSTEE AND APPELLANT TO FILE SUPERSEDEAS BOND

To the Clerk of the Above-Entitled Court, and to J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmerman, Floyd C. Jackson, Gladys M. Zimmerman, Edwin H. Jasmann, Frank Sutton, George F. Scott, and John E. Vick, and to Pembroke Gochnauer, Esq., Their Attorney, and to Messrs. Rogers and Clark, Appearing as Counsel for Debtor:

You, and each of you, Will Please Take Notice That Fred G. Stevenot, the duly and regularly ap-

pointed, qualified and acting Trustee of the property and assets of Debtor above named, hereby appeals to the Circuit Court of Appeals of the Ninth Circuit from that certain "Order Requiring Trustee and Appellant to File Supersedeas Bond," entered in the above-entitled proceedings on the 16th day of May, 1952, the Honorable George B. Harris presiding.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,

By /s/ GEORGE HERRINGTON,

/s/ STERING CARR,
Attorneys for Trustee.

[Endorsed]: Filed May 21, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM ORDER REINSTATING EMPLOYEES WITH BACK PAY

To the Clerk of the Above-Entitled Court, and to J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmerman, Floyd C. Jackson, Gladys M. Zimmermann, Erwin H. Jasman, Frank Sutton, George F. Scott, and John E. Vick, and to Pembroke Gochnauer, Esq., Their Attorney, and to Messrs. Rogers and Clark, Appearing as Counsel for Debtor:

You, and each of you, Will Please Take Notice That Gred G. Stevenot, the duly and regularly ap-

pointed, qualified and acting Trustee of the property and assets of Debtor above named, hereby appeals to the Circuit Court of Appeals of the Ninth Circuit from that certain "Order Reinstating Employees With Back Pay," entered in the above-entitled proceedings on the 16th day of May, 1952, the Honorable George B. Harris presiding.

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

By /s/ GEORGE HERRINGTON,

/s/ STERLING CARR,

Attorneys for Trustee.

[Endorsed]: Filed May 21, 1952.

[Title of District Court and Cause.]

MEMORANDUM OF COSTS AND DISBURSEMENTS

Disbursements on Account of Petition for Reinstatement of Employees With Back Pay

Transcript of Remarks of the Court at Conclusion of Argument, Friday, Feb. 15, 1952. . 4.00*
Witness fees and Mileage—See Schedule I. . 199.20*
Cost of verification of Petition for Reinstatement of Employees with Back Pay. 50
Fee for service of subpoena on Martin T. Dyke, February 1, 1952. . . . . 2.50

*Disallowed

Memorandum of Costs and Disbursements—(Cont.)

Cost of Affidavit of Service of subpoena on Martin T. Dyke..... .50

Cost of verification herein..... .50

Total Disbursements $207.20

6-6-52. Taxed and allowed at.....4.00

/s/ C. C. EVENSEN,
Deputy Clerk.

State of California,
City and County of San Francisco—ss.

Pembroke Gochnauer being duly sworn, deposes and says: That he is the attorney for petitioners in the Petition for Reinstatement of Employees with Back Pay in the above-entitled cause, and as such has knowledge of the facts relative to the above costs and disbursements; that the items in the above memorandum contained are correct; that the said disbursements have been necessarily incurred in the said cause; and that the services charged therein have been actually and necessarily performed as therein stated.

/s/ PEMBROKE GOCHNAUER.

Subscribed and sworn to before me this 21st day of May, A.D. 1952.

[Seal] /s/ LORAINE MICHEL,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission expires: April 18, 1953.

To Messrs. Orrick, Dahlquist, Neff & Herrington and Sterling Carr, Esq., attorneys for Trustee:

You will please take notice that on Friday the 23rd day of May, A.D. 1952, at the hour of 2:00 o'clock p.m., Petitioners in Petition for Reinstatement of Employees with Back Pay will apply to the clerk of said Court, to have the within memorandum of costs and disbursements taxed, pursuant to the rule of said Court, in such case made and provided.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners.

Service of within memorandum of costs and disbursements and receipt of a copy thereof acknowledged this 21st day of May, A.D. 1952.

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

/s/ STERLING CARR,
Attorneys for Trustee.

Schedule I.

Date	Witness	Per Diem Fee	Mileage from Cloverdale, California, to San Francisco and return (180 miles at 7c per mi.)
Feb. 2, 1952	Wesley Cross	$ 4.00	$ 12.60
May 1, 1952	J. W. Norberg	4.00	12.60
do	Nils G. Matson	4.00	12.60
do	Merritt W. Tallman	4.00	12.60
do	Milo F. Barnhart	4.00	12.60
do	Roland C. Zimmerman	4.00	12.60
do	Floyd C. Jackson	4.00	12.60
do	Gladys M. Zimmerman	4.00	12.60
do	Edwin H. Jasmann	4.00	12.60
do	Frank Sutton	4.00	12.60
do	George F. Scott	4.00	12.60
do	John E. Vick	4.00	12.60
		$48.00	$151.20
			48.00
Total of Witness Fees and Mileage			$199.20

[Endorsed]: Filed May 22, 1952.

[Title of District Court and Cause.]

STIPULATION CONTINUING HEARING ON TAXING OF COSTS

It Is Hereby Stipulated that the hearing on the taxing of costs as set forth in the cost bill of petitioners and verified upon May 21, 1952, may be continued by the Clerk of the above-entitled Court from the 23rd day of May, 1952, to the 2nd day of June, 1952, at the hour of two o'clock p.m.

It Is Further Stipulated that either side instead of appearing in person at said hearing may set forth

his objections or contentions in writing and forward to the Clerk of the above-entitled Court after serving same upon the other parties.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners.

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

By /s/ STERLING CARR,

/s/ STERLING CARR,
Attorneys for Trustee.

Sterling Carr
One Montgomery Street
San Francisco 4

May 22, 1952.

Clerk of the United States District Court,
Post Office Building,
Ninth and "I" Streets,
Sacramento, California.
Attention: Mr. C. C. Evensen

Re: Coastal Plywood & Timber Co., Debtor.

Dear Mr. Evensen:

Thank you for your favor of May 21 enclosing a copy of your certificate on the appeal in the above-entitled matter. So far as I can see it covers everything and is excellently made up.

Late yesterday a cost bill was served on me in this matter, in which the time for taxing the costs was fixed for tomorrow (Friday) afternoon at two p.m.

It would be impossible for me to be there and I agreed with the other side on an extension to June 2, coming, at two o'clock p.m., and with the right to present our objections in writing rather than by personal appearance. Enclosed you will please find such Stipulation which I shall be obliged if you will file. If this time is not agreeable to you please be good enough to advise me and we will fix some other period.

Thanking you and with kind regards, believe me,

Sincerely,

/s/ STERLING CARR.

SC/wc
Enclosure

[Endorsed]: Filed May 23, 1952.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MEMORANDUM OF COSTS AND DISBURSEMENTS

State of California,
City and County of San Francisco—ss.

Pembroke Gochnauer, being first duly sworn, deposes and says:

Affiant is the attorney for petitioners in the Petition for Reinstatement of Employees with Back Pay in the above-entitled proceedings. Said petition came on for hearing before the above-entitled Court,

Honorable George B. Harris presiding, on the 11th, 12th, 13th, 14th and 15th days of February, 1952, and an "Interlocutory Order Reinstating Employees with Back Pay," directed to the Debtor's trustee, was entered in the above-entitled proceedings on February 15, 1952. Since entry of said Order, the Debtor's trustee has failed to reimburse petitioners for any of the wages lost by them, as set forth in and as directed by said Order. Although the amounts of said wages lost were ascertainable from Debtor's records, without the necessity of further appearance of petitioners as witnesses before said Court, the Debtor's trustee refused to stipulate with petitioners as to the amounts of said wages, and consequently your affiant was compelled to require each of the petitioners to appear before said Court on May 1, 1952, for a hearing to enable the Court to determine the amounts of said wages. At the commencement of said hearing, George Herrington, Esq., one of the attorneys for the Debtor's trustee, announced in open Court that the Debtor's trustee was then ready to stipulate to the amounts of said wages lost by each of the petitioners, and said amounts were thereupon agreed to and fixed by stipulation between counsel for the respective parties. Thereafter, at said hearings, said Herrington called each of the petitioners to the stand as witnesses for the Trustee and examined each of them with respect to his efforts to obtain other employment during the period to which said amounts of lost wages relates. None of the petitioners testified at said hearing in his own behalf, but each of them was called by the adverse

party to testify as to his efforts to mitigate or lessen the amount of his own loss.

/s/ PEMBROKE GOCHNAUER.

Subscribed and sworn to before me this 29th day of May, 1952.

[Seal] /s/ LORAINE MICHEL,
Notary Public in and for the City and County of San Francisco, State of California.

My commission expires: April 18, 1953.

[Endorsed]: Filed May 31, 1952.

Pembroke Gochnauer
Attorney at Law
One Eleven Sutter Street
San Francisco 4
EXbrook 2-1869

May 29, 1952.

Mr. C. C. Evensen, Clerk,
District Court of the United States,
Northern District of California,
Post Office Box 1047,
Sacramento, California.

Re: Coastal Plywood & Timber Company—No. 12223. Memorandum of costs and disbursements

Dear Mr. Evensen:

A memorandum of disbursements in the above matter was filed on May 22, 1952. Thereafter a

stipulation between myself as counsel for the petitioners and the attorneys for the trustee was signed and presumably filed with you by the attorneys for the trustee. By the terms of this stipulation you are to tax costs in this matter on June 2, 1952, at 2:00 o'clock p.m. and either party may set forth his objections or contentions in writing and forward the same to you after serving same upon the other parties without appearing in person.

While I have not at this writing been served with any written objections or contentions of the trustee with respect to the memorandum of costs, it is my understanding that counsel for the trustee intends to object to the allowance as costs of the items of witness fees and mileage, each dated May 1, 1952, as listed in Schedule I attached to the said memorandum. I believe the basis of objection is that each of said items represents a claim of an individual who was a petitioner in the proceeding.

I do not understand that any objection is raised as to the allowance of witness fee and mileage to Wesley Cross, dated February 2, 1952. This witness was subpoenaed and paid the amounts claimed and he was not a party to the proceeding.

With respect to the witness fees and mileage costs claimed on behalf of each of the petitioners I enclose herewith my own affidavit setting forth in brief the circumstances surrounding their appearance in court. You will note no claim is presented for witness fees or mileage on behalf of petitioners

for their appearances during the trial—February 11-15, 1952, both inclusive.

On the basis of the affidavit enclosed herewith, it is submitted that these witness fees and mileage costs for May 1, 1952, appearing in said Schedule I, are properly allowable costs within the rule stated in the case of Tuck vs. Olds, 29 Fed. 883 (Circuit Court, W. D. Mich., S. D. 1886). See also Roundtree vs. Rembert, 71 Fed. 225 (Circuit Court, D.S.C. 1896); 8 Cyclopedia of Federal Procedure, Sec. 3650 at p. 456. It is my understanding, by these authorities, that these petitioners are entitled to witness fees and mileage costs as claimed, because their court attendance as witnesses has been shown by the enclosed affidavit to have been solely as witnesses of counsel for the Debtor's trustee, and not as witnesses in their own behalf.

Although these petitioners were not subpoenaed to appear as witnesses, still it is further submitted that they may appear voluntarily as witnesses and have their witness fees and mileage costs taxed as costs. The Petroleum No. 5, 41 F. 2d 268, (D.C.S.D. Texas 1930).

Respectfully yours,

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners.

G:C
Enclosure (1)

Receipt of a copy of this letter and of the affidavit of Pembroke Gochnauer referred to therein is hereby acknowledged this 29th day of May, 1952.

/s/ STERLING CARR,

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

By /s/ STERLING CARR,
Attorneys for Trustee and Appellant.

ROGERS AND CLARK,

By /s/ SCOTT GOODFELLOW,
Attorneys for Debtor.

[Endorsed]: Filed May 31, 1952.

Sterling Carr
One Montgomery Street
San Francisco 4

May 29, 1952.

Clerk of the United States District Court,
Post Office Building,
Ninth and "I" Streets,
Sacramento, California.
Attention: Mr. C. C. Evensen

Re: Coastal Plywood & Timber Company,
Debtor, No. 12223
In re: Retaxing Cost Bill

Dear Mr. Evensen:

Pursuant to the stipulation continuing the retaxing of such cost bill and which stipulation has previously been sent you:

The Trustee hereby objects to the following items of said cost bill:

(a) Transcript of Remarks of the Court:

(b) Witness Fees and Mileage as per Schedule.

As to the Transcript: Such was ordered by counsel for petitioners for his own use and does not form a proper charge herein.

As to the Witness Fees and Mileage: All parties for whom such fees and charges were made were the petitioners to this proceeding—nominally the plaintiffs—and parties to the proceeding. They were not subpoenaed by the Trustee and therefore are not entitled to fees or mileage.

To this end, see the following cases:

Picking vs. Pennsylvania R. R., Etc., 11 F. R. D. 71;

Re: Wahkeena—51 Fed. (2) 106;

The Philadelphia—163 Fed. 438;

Hopkins vs. General Electric—93 Fed. Sup. 425, Subdvs. 4 and 5;

The Petroleum, Etc., 41 Fed. (2) 268.

For the reasons above stated and by virtue of such authorities, said Trustee hereby moves that such cost bill be retaxed and said items objected to herein be eliminated therefrom.

A copy of this letter is this day being mailed to Mr. Gochnauer, the attorney for the petitioners.

Very respectfully,

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,

STERLING CARR,

By /s/ STERLING CARR,
Attorneys for Trustee.

cc: Pembroke Gochnauer, Esq.
Attorney at Law
111 Sutter Street
San Francisco, California

P.S.—Since writing the above, Mr. Gochnauer has served upon us a copy of an affidavit and some authorities in support of his position. We respectfully request a few days to answer the same and further request that the same courtesy be extended to the attorney for petitioners.

/s/ STERLING CARR.

[Endorsed]: Filed May 31, 1952.

[Title of District Court and Cause.]

DESIGNATION OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL FROM ORDER REQUIRING TRUSTEE TO FILE SUPERSEDEAS BOND

Now comes Fred G. Stevenot, Trustee of Debtor above named, and Appellant above named, and sets forth a statement of the points upon which appellant intends to rely on appeal, as follows:

1. The District Court erred in making the Order requiring Trustee and Appellant to file a supersedeas bond and filed in the above-entitled Court on or about the 16th day of May, 1952.

2. The District Court erred in requiring said Trustee and Appellant to cause to be prepared and filed with said Court a supersedeas bond in the sum of Ten Thousand Dollars conditioned as set forth in said Order.

3. The District Court was without right, power or jurisdiction to make said Order filed herein as aforesaid on or about May 16, 1952, or to require said Trustee as a Trustee in Bankruptcy and an appellant herein to make or file said supersedeas bond.

4. The District Court erred in making its said Order requiring said Trustee and Appellant to make said payments to said petitioners in the amounts set forth in said Order.

5. The District Court erred in providing in said Order that said requirement for the payment of said sums to said petitioners as set forth in said Order should be made part of or become part of the Interlocutory Order reinstating employees with back pay upon the ground, among others, that an appeal had been taken from said Interlocutory Order reinstating employees with back pay prior to the making of said Order filed herein on or about May 16, 1952, and that by reason thereof said Court was without jurisdiction, right or authority to make said Order filed on or about May 16, 1952, a part of said Interlocutory Order reinstating employees with back pay.

Dated: June 2nd, 1952.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,

By /s/ STERLING CARR,

/s/ STERLING CARR,
Attorneys for Trustee and
Appellant.

[Endorsed]: Filed June 3, 1952.

Sterling Carr
One Montgomery Street
San Francisco 4

June 3, 1952.

Clerk of the United States District Court,
Post Office Building,
Ninth and "I" Streets,
Sacramento, California.
Attention: Mr. C. C. Evensen.

In the Matter of Coastal Plywood & Timber Co., Debtor, In re Retaxing Cost Bill

Dear Mr. Evensen:

Replying to Mr. Gochnauer's affidavit and letter to you of May 29th, last, in the above matter:

The witnesses in question were all petitioners and direct parties to the action and as such claiming witness fees and costs of transporation in their own proceeding. They were brought to court by Mr. Gochnauer, their own attorney, and were not subpoenaed by defendants, and the testimony elicited from them by Mr. Herrington was on cross-examination to ascertain whether or not they had or could have secured employment during the period in question for which they were seeking damages from the Trustee. They voluntarily appeared in Court after the Trustee through his attorneys had agreed to take their deposition in Cloverdale. Such offer was rejected by Mr. Gochnauer who stated that he preferred to have them present in Court. The fact that no witness fees are claimed for these particular parties for their appearance during the trial in

February of this year is immaterial on this present proceeding for counsel evidently recognized that such a charge would have been improper.

The parties in question were not called to the stand by Mr. Herrington as witnesses for the Trustee, but were called under cross-examination as aforesaid to establish whether or not such damages were or might have been minimized. All of the witnesses did testify in their own behalf to establish the fact that no minimization was present.

There is nothing in any of the authorities cited by counsel which affects the situation or the cases cited by the attorneys for the Trustee in their letter to you of May 29th, last, and we respectfully submit that the charges for fees and expenses should be disallowed.

Respectfully submitted,

ORRICK, DAHLQUIST, NEFF & HERRINGTON, and

STERLING CARR,

By /s/ STERLING CARR,
Attorneys for Trustee.

cc: Pembroke Gochnauer, Esq.
Attorney at Law,
111 Sutter Street,
San Francisco, California.

Rogers and Clark, Esqs.
Attorneys at Law,
111 Sutter Street,
San Francisco, California.

[Endorsed]: Filed June 4, 1952.

Pembroke Gochnauer
Attorney at Law
One Eleven Sutter Street
San Francisco 4
EXbrook 2-1869

June 3, 1952.

Mr. C. C. Evensen, Clerk,
District Court of the United States,
Northern District of California,
Post Office Box 1047,
Sacramento, California.

Dear Mr. Evensen:

Re: Coastal Plywood & Timber Company, No. 12223. Memorandum of costs and disbursements

Yesterday I received in the mail a copy of Mr. Carr's letter to you dated May 29, 1952, setting forth his objections to the memorandum of costs heretofore filed in the above matter. I offer the following comments concerning the objections and authorities set forth in his letter.

Transcript of remarks of the Court: When I wrote you on May 29, 1952, I did not know that counsel for the trustee had any objection to this item. The item covers the remarks of the Court at the conclusion of the hearing on February 15, 1952, which he announced were in the nature of "oral findings" although he directed me to prepare findings of fact and conclusions of law. Obviously, it was necessary for me to have a transcript of these remarks in order to prepare the formal findings

of fact which were subsequently filed in the proceeding. The item is properly allowable under the Judicial Code (28 U.S.C.A. Section 1920) which lists as taxable costs—"fees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case." This provision was added to the Code in 1948.

Witness fees and mileage: The authorities cited in Mr. Carr's letter, with the exception of The Petroleum case, merely support the rule that parties to the proceeding are not entitled to witness fees when testifying in their own behalf. As indicated in my letter of May 29, this was not the case here and no witness fees have been claimed for the petitioners who appeared as witnesses in their own behalf at the trial, February 11 to 15, 1952, inclusive. The case of The Petroleum, etc., 41 Fed. 2d 268, holds that witness fees may be allowed and taxed as costs where the witnesses appear voluntarily, and without subpoena.

Respectfully yours,

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners.

cc: Orrick, Dahlquist, Neff & Herrington,
Sterling Carr,
Attorneys for Trustee.
Rogers and Clark,
Attorneys for Debtor.

[Endorsed]: Filed June 4, 1952.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL FROM ORDER REINSTATING EMPLOYEES WITH BACK PAY, FILED MAY 16, 1952

Now comes Fred G. Stevenot, Trustee of Debtor above named, and Appellant above named, and sets forth a statement of the points upon which appellant intends to rely on such appeal, as follows:

1. The District Court erred in denying appellant's motions to dismiss the petition for reinstatement of employees with back pay.

2. The District Court erred in including in said Order last above referred to and filed herein upon the 16th day of May, 1952, the provision requiring said Trustee to re-employ said petitioners named in said Order, and further in ordering that said Trustee pay to said petitioners and each of them the amounts set forth in said Order. The said District Court further erred in ordering and directing said Trustee to pay to said petitioners any sums or amounts whatsoever.

3. The District Court erred in granting the petition of said petitioners and further in ordering said Trustee to re-employ and reinstate said employees in their former or any other positions or employments.

4. The District Court erred in granting the peti-

tion of petitioners for specific performance of their contract for personal services.

5. The District Court erred in not holding that the original contract of employment contained on the back of the stock certificate issued to each of petitioners was amended and changed by the Amended Bylaws adopted by Debtor on September 10, 1950.

6. The District Court erred in holding that Section 7 of Article III of said Bylaws, duly and regularly adopted by the said Stockholders of said Debtor on the 10th day of September, 1950 and reading as follows, to wit:

> "Section 7. General Manager. The General Manager shall have general supervision and direction of the business and affairs of the corporation. Without limiting, except as otherwise herein provided, his other powers, he may employ, suspend and discharge such agents and employees of the corporation as he may from time to time deem necessary, and prescribe their duties, terms of employment and compensation.",

did not give to and empower said General Manager of said Debtor full and uncontrolled right, power and authority to employ and discharge agents and employees of said Debtor at any time and for any reason or purpose whatsoever and which to him seemed best.

7. The District Court erred in not holding that

the failure of petitioners to offer their stock to Debtor, as required by its Articles of Incorporation and/or Bylaws, before granting to a third party an option to purchase the same constituted a breach of contract with Debtor which entitled Debtor and appellant herein to discharge petitioners and each of them from their and each of their employment with Debtor.

8. The District Court erred in substituting its judgment for that of the Trustee, appellant herein, and his General Manager in the ordinary operations of Debtor.

Dated this 3rd day of June, 1952.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,

By /s/ GEORGE HERRINGTON,

/s/ STERLING CARR,
Attorneys for Said Trustee.

[Endorsed]: Filed June 5, 1952.

June 6th, 1952.

Pembroke Gochnauer, Esq.,
Attorney at Law,
111 Sutter Street,
San Francisco 4, Calif.

In re: Coastal Plywood & Timber Co.,
Bk. No. 12223

Dear Sir:

The taxation of costs was continued to this date. I taxed costs in the sum of $4.00. I disallowed

the cost of the transcript of remarks of the court at the conclusion of the argument, for the reason that it was not ordered by the Court, but was ordered for the convenience of counsel.

I disallowed the witness fees and mileage on the ground that they were parties in interest (nominally plaintiffs), and consequently not entitled to witness fees or mileage.

The remaining items totaling $4.00 was taxed and allowed.

Very truly yours,

C. W. CALBREATH,
Clerk.

By C. C. EVENSEN,
Deputy Clerk.

cc: Sterling Carr, Esq.,
1 Montgomery Street,
San Francisco 4, Calif.

[Title of District Court and Cause.]

NOTICE OF MOTION BY PETITIONERS TO REVIEW TAXATION OF COSTS BY CLERK AND TO RETAX COSTS

To Fred G. Stevenot, Esq., Trustee of the Estate of The Above-Named Debtor, Coastal Plywood & Timber Company, and Sterling Carr, Esq., Crocker First National Bank Building, San Francisco, California, and Messrs. Orrick, Dahlquist, Neff and Herrington, 405 Mont-

gomery Street, San Francisco, California, His Attorneys:

You and Each of You Will Please Take Notice that on Friday, the 13th day of June, 1952, at the hour of two o'clock p.m. of said day, or as soon thereafter as counsel can be heard, in the courtroom of the above-entitled Court, the Honorable George B. Harris presiding, in the United States Post Office Building, San Francisco, California, the petitioners, J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmerman, Edwin H. Jasmann, Frank Sutton, George F. Scott and John E. Vick, will move said Court, under Rule 54(d) of the Rules of Civil Procedure and Rule 9(e) of the Rules of Practice of said Court, to review the action of the Clerk of said Court on June 6, 1952, in taxing costs of petitioners and to retax said costs. Petitioners do hereby appeal from the rulings of said Clerk on such taxation in disallowing the following items of petitioners' Memorandum of Costs and Disbursements, to wit:

1. Cost of Transcript of Remarks of the Court at Conclusion of Argument, Friday, February 15, 1952.....$ 4.00
2. Witness Fees and Mileage 199.20

Said motion will be made upon the grounds that the disallowance of said first item of costs was improper because said Transcript was necessarily obtained for use in the above-entitled proceeding; and that the disallowance of witness fees and mileage

was improper because said witness fees and mileage relate to the court attendance of petitioners as witnesses of counsel for the Debtor's Trustee in the above-entitled proceeding, and not as witnesses in their own behalf, and to the court attendance of one Wesley Cross as a witness, who was subpoenaed and paid the amounts claimed in said Memorandum of Costs and Disbursements and who was not a party to the above-entitled proceeding.

Dated: June 9, 1952.

/s/ PEMBROKE GOCHNAUER,
Attorney for Petitioners.

Receipt of copies of the within Notice of Motion is hereby admitted this 9th day of June, 1952.

/s/ STERLING CARR,
Attorney for Trustee.

ORRICK, DAHLQUIST, NEFF & HERRINGTON,

By /s/ STERLING CARR,
Attorneys for Trustee.

ROGERS AND CLARK,
By /s/ H. SCOTT GOODFELLOW,
Attorneys for Debtor.

Good cause having been shown, it is hereby Ordered that the time of service of copies of the within Notice of Motion as provided by Rule 6(d) of the Rules of Civil Procedure be shortened, and that the hearing upon the motion of the above-named petitioners to review taxation of costs by clerk and to

retax costs be set for Friday, the 13th day of June, 1952, at the hour of two o'clock p.m.

Dated: June 9, 1952.

/s/ GEORGE B. HARRIS,
United States District Judge.

[Endorsed]: Filed June 10, 1952.

[Title of District Court and Cause.]

ORDER GRANTING MOTION TO RETAX COSTS

Petitioners' motion to retax costs having been argued, briefed and submitted for ruling,

It Is Ordered that the motion be, and the same hereby is, allowed as prayed for.

Dated: July 10, 1952.

/s/ GEORGE B. HARRIS,
United States District Judge.

28 U.S.C.A. 1920;
Petroleum, etc.,
41 F. 2d 268.

[Endorsed]: Filed July 11, 1952.

[Title of District Court and Cause.]

NOTICE OF APPEAL FROM ORDER RETAXING COSTS

To the Clerk of the Above-Entitled Court, and to J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott, and John E. Vick, and to Pembroke Gochnauer, Esq., Their Attorney, and to Messrs. Rogers and Clark, Appearing as Counsel for Debtor:

You, and each of you, Will Please Take Notice That Fred G. Stevenot, the duly and regularly appointed, qualified and acting Trustee of the property and assets of Debtor above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from that certain "Order Granting Motion to Retax Costs," entered in the above-entitled proceedings on the 11th day of July, 1952, the Honorable George B. Harris presiding.

ORRICK, DAHLQUIST, NEFF & HERRINGTON, and

STERLING CARR,

By /s/ STERLING CARR,
Attorneys for Trustee.

[Endorsed]: Filed July 18, 1952.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL FROM THE ORDER GRANTING MOTION TO RETAX COSTS, FILED HEREIN ON JULY 11, 1952

Now comes Fred G. Stevenot, Trustee of Debtor above named, and Appellant above named, and sets forth a statement of the points upon which appellant intends to rely on such appeal as follows, to wit:

1. The District Court erred in denying appellant's motion to retax costs on the proceedings to compel the reinstatement of appellees with back pay.

2. The District Court erred in allowing the items of $4.00 for the transcript of remarks of the Court at the conclusion of the argument on Friday, February 15, 1952.

3. The District Court erred in allowing witness fees and mileage as per Schedule I attached to the costs bill, filed herein and amounting to $199.20.

Dated this 21st day of July, 1952.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON, and

STERLING CARR,
By /s/ STERLING CARR,
Attorneys for Said Trustee.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 22, 1952.

In the District Court of the United States for the Northern District of California, Southern Division

No. 12223

Before: Hon. George B. Harris, Judge.

In the Matter of

COASTAL PLYWOOD & TIMBER COMPANY, a Corporation,

Debtor.

In Proceedings for the Reorganization of a Corporation

REPORTER'S TRANSCRIPT HEARING ON PETITION FOR REINSTATEMENT OF EMPLOYEES WITH BACK PAY

Monday, February 11th, 1952

* * *

Q. Did you offer your stock to the company before you gave this option to Mr. Hampton?

Mr. Gochnauer: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

A. No, I didn't.

* * *

Mr. Clark: I will give you a stipulation on the figures as I have them. As of June 30, and I don't think they have substantially changed, they are these: That out of 273 employees which were employed by the company at that time only 90 at this

writing are stockholders, and of those 53 have optioned their stock to Hampton. If you want that stipulation I will give it to you.

The Court: I think you might have that in writing.

Mr. Clark: Very well, I will prepare it in writing.

* * *

Mr. Clark: Mr. Cross, do I understand that if this had been left to you to make the decision solely from the standpoint of job performance, you would not have laid these men off?

Mr. Carr: I object to that as incompetent, irrelevant and immaterial.

Mr. Clark: I will submit it, Your Honor.

The Court: Overruled.

A. If I had been in Mr. Dyke's shoes, and the man he is, I probably would have gone ahead and done it, but as I stated, I have Christian beliefs in the matter and therefore I would not.

* * *

[Endorsed]: Filed May 23, 1952.

[Title of District Court and Cause.]

HEARING ON MOTION TO RETAX COSTS REPORTER'S TRANSCRIPT

Monday, July 7, 1952

The Clerk: Matter of Coastal Plywood & Timber Company, motion to retax costs.

Mr. Gochnauer: Your Honor, I understand the papers pertaining to this matter are not before the Court. I gave Mr. Magee my office copy of the cost bill and certain other documents. The matter was submitted to the Clerk in Sacramento, this being a Sacramento filing, and it was handled through correspondence with Mr. Evensen. I will give you my office copies of that correspondence.

The Court: All right.

Mr. Gochnauer: The motion to retax pertains to three items in the cost bill, the clerk having disallowed the entire bill with the exception of $4 which covers certain affidavits, and that is all.

The first item disallowed to which we have filed this motion is a copy of the transcript of the Court's remarks at the conclusion of the hearing on February 15th. The portion of the transcript which I ordered were the Court's remarks in which the Court announced orally its findings, and the purpose of ordering them, of course, was to enable me to prepare written findings of fact in accordance with the Court's remarks.

I called attention to the clerk in Sacramento through a letter of June 3, 1952, that this item was properly allowable under the language of the statute, Judicial Code USCA Section 1920 which lists as taxable costs the fees of the court reporter or any part of the stenographic transcript necessarily obtained for use in the case, and pointed out to him that that was the reason that that should be approved.

The Court: The clerk allowed $4.00?

Mr. Gochnauer: Yes, Your Honor, I think that is the total of those minor items on page 1 of the cost bill approved.

Mr. Carr: Well, no, the clerk didn't allow you—if I understand His Honor——

Mr. Gochnauer: He allowed the $4.

The Court: Transcript remarks of Court at the conclusion of hearing, $4. The clerk allowed that?

Mr. Gochnauer: No. If you will look at the other items on page 1 of the cost bill, I think they aggregate $4. He allowed the other items but not that one, and Mr. Evensen's letter, which I believe you have a copy of, says that he disallowed that item.

The Court: Yes, I have it.

Mr. Gochnauer: That is No. 1.

No. 2 is the witness fee for the mileage for the witness Wesley Cross who appeared at the main hearing. Your Honor will recall he was foreman-supervisor of most of these petitioners.

The Court: Yes.

Mr. Gochnauer: That witness fee and mileage was actually paid by myself to Mr. Cross at the time he was subpoenaed. The clerk I think was misled by Mr. Carr's objections—I believe you have a copy of his letter to the clerk before you in which he said that all of the witness fees claimed in the cost bill were those of petitioners. In that Mr. Carr overlooked the fact that Cross' fee was included.

In his letter to the clerk in Sacramento dated June 3, 1952, replying to my affidavit and letter of May 29th, he says:

"The witnesses in question were all petitioners and direct parties to the action and as such claiming witness fees and costs of transportation in their own proceeding."

As to Mr. Cross he was of course mistaken. He was not.

Third, the final, if Your Honor please, and major item we ask to revise pertains to mileage and witness fees of the eleven petitioners who appeared in this court on May 1st to give testimony as to the amount of wages lost in order that Your Honor might fix in the final judgment the exact amounts of money owed.

In that connection I filed with the cost bill my affidavit, which is rather short, and I will read it:

"Pembroke Gochnauer, being first duly sworn, deposes and says:

"Affiant is the attorney for petitioners in the Petition for Reinstatement of Employees with Back Pay in the above-entitled proceedings. Said petition came on for hearing before the above-entitled Court, Honorable George B. Harris presiding, on the 11th, 12th, 13th, 14th and 15th days of February, 1952, and an 'Interlocutory Order Reinstating Employees with Back Pay,' directed to Debtor's Trustee, was entered in the above-entitled proceedings on February 15, 1952. Since entry of said Order, the Debtor's Trustee has failed to reimburse petitioners for any of the wages lost by them, as set forth in and as directed by said order. Although the amounts of said wages lost were ascertainable from Debtor's records, without the necessity of

further appearance of petitioners as witnesses before said Court, the Debtor's Trustee refused to stipulate with petitioners as to the amounts of said wages, and consequently your affiant was compelled to require each of the petitioners to appear before said Court on May 1, 1952, for a hearing to enable the Court to determine the amounts of said wages. At the commencement of said hearing, George Herrington, Esq., one of the attorneys for the Debtor's Trustee, announced in open court that the Debtor's Trustee was then ready to stipulate to the amounts of said wages lost by each of the petitioners, and said amounts were thereupon agreed to and fixed by stipulation between counsel for the respective parties. Thereafter, at said hearing, said Herrington called each of the petitioners to the stand as witnesses for the Trustee, and examined each of them with respect to his efforts to obtain other employment during the period to which said amounts of lost wages relate. None of the petitioners testified at said hearing in his own behalf, but each of them was called by the adverse party to testify as to his efforts to mitigate or lessen the amount of his own loss."

Mr. Carr's objection to that, Your Honor, is that a party to the action is not by law permitted to obtain witness fees and mileage. As Your Honor undoubtedly knows, the reason for that is that a party to an action is interested in the management of the case and normally attends throughout.

I cited the clerk to that case in Michigan, which, so far as I know, has never been overruled, that

where the party appears not for the purpose of maintaining the action, but solely for the purpose of giving evidence on a particular day, the rule does not apply because the reason for the rule does not apply. The reason a party is not ordinarily permitted witness fees is that he is interested in the management of the case and that he has the election as to whether or not he shall appear and testify, and the cases so hold.

In reply to my affidavit, Mr. Carr wrote the clerk at Sacramento the following letter:

> "Dear Mr. Evensen:
>
> "Replying to Mr. Gochnauer's affidavit and letter to you of May 29th, last, in the above matter:
>
> "The witnesses in question were all petitioners and direct parties to the action"——

They were all petitioners except Cross——

> "and as such claiming witness fees and costs of transportation in their own proceeding. They were brought to court by Mr. Gochnauer, their own attorney, and were not subpoenaed by the defendants,"——

That, of course, is correct——

> "and the testimony elicited from them by Mr. Herrington was on cross-examination to ascertain whether they had or could have secured employment during the period in question for which they were seeking damages from the Trustee."

Mr. Carr is mistaken about that, Your Honor. You will recall that each of these people were called by Mr. Herrington and examined on the issue as to whether or not they had sought to mitigate their own loss. Reading on:

> "They voluntarily appeared in court after the Trustee through his attorneys had agreed to take their deposition in Cloverdale."

It would have been more accurate to say, "had proposed to take their depositions."

> "Such offer was rejected by Mr. Gochnauer who stated that he preferred to have them present in court. The fact that no witness fees are claimed for these particular parties for their appearance during the trial in February of this year is immaterial on this present proceeding, for counsel evidently recognized that such a charge would have been improper."

Reading on:

> "The parties in question were not called to the stand by Mr. Herrington as witnesses for the Trustee, but were called under cross-examination as aforesaid to establish whether or not such damages were or might have been minimized."

Your Honor will recall that I called the first witness, Mr. Norberg to the stand, at which time Mr. Herrington offered to stipulate to the amount of the losses of each witness, and I accepted that stipulation. Your Honor then said, "We will hear evidence as to mitigation." And I said that we desired to

offer no evidence on the point whatever. Mr. Herrington then took on Mr. Norberg and each of the eleven petitioners and asked him about his efforts to get other work. He did not announce whether he was calling him under Rule 43 (b); but whether he was calling him that way or not, the witness was certainly presented as his own witness, and had he called him under 43 (b) as his witness, he would have been required to pay the witness fee and mileage. No claim is made for any witness fee for any of these petitioners at the trial of the case, but I submit that having to appear here to assist the Court in fixing the amount of damages and then after their appearance having a stipulation which I have previously cited agreed to, then the witnesses being presented solely to testify as to the trustee's defense, there is no reason why they should not properly be allowed as costs. They actually appeared. They have not claimed here loss of wages on the days on which they appeared.

I submit, if Your Honor please, the cost bill as filed is entirely proper.

I will be glad to give Your Honor my office copies of the rest of the correspondence.

Mr. Carr: You have given His Honor that copy of my letter that you read?

Mr. Gochnauer: I did.

Mr. Carr: May it please Your Honor, in reference to the $4, a very small item, the Clerk's letter is somewhat misleading to this extent. He says, "I attached costs in the sum of $4. I disallowed the cost of the transcript of the remarks of the Court

at the conclusion of the argument for the reason that it was not ordered by the Court but was ordered for the convenience of counsel."

I noted that there is only one charge there for $4, so it is difficult to understand just what he means. But, of course, the law is that any transcripts ordered for the convenience of counsel as shown by Mr. Gochnauer's affidavit are not taxable. That was definitely decided by the Supreme Court in Pine River Company vs. U. S., 186 U. S. 279, where it was held, as it has been held in a number of cases, that Section 983 did not include transcript of evidence for the personal use of counsel in preparing the record for the Appellate Court.

That case was cited with approval by Judge Goodman in 1947 in the case of Burnham Chemical Company vs. Borad Consolidated Company, 7 F.R.D., 341, Subdivisions 3 and 4. That is a case in which counsel did exactly what Mr. Gochnauer did here: ordered it for his own personal convenience.

As to the witnesses, Your Honor, probably the best evidence of why they were brought here is from the transcript. I am reading from page 518, commencing with line 18:

> "We are here today on the motion that he file supersedeas bond, and preliminarily to that we are here to ascertain the amount of wages lost by these petitioners within the meaning of Your Honor's order of February 15, 1952."

And he said,

> "I had hoped, Your Honor, until early this week that this matter would all be settled inso-

far as the amount of wages lost was concerned, but I found that that could not be, so that I had no alternative but to bring the eleven people down here. They are here."

Further on at page 519, commencing with line 23, with respect to seeking other employment:

"It is my understanding that we are here today because of a desire to cross-examine these people as to their efforts in obtaining outside employment."

Further on, on that same subject, page 520, line 19:

"Mr. Gochnauer: I do not contend that he"——

referring to counsel——

"is foreclosed from cross-examining. In order that these proceedings may not be drawn out interminably, I shall not object to his questions on that."

Further on, on page 522, line 4:

"Mr. Gochnauer: May I proceed to produce the witnesses?

"The Court: I think I understand pretty much the issue, counsel, and with that statement. Do you have any further statements, gentlemen?"

On line 10 Mr. Gochnauer called Mr. Norberg.

Page 523, line 24:

"The question then before the Court is mitigation. You may proceed on that phase."

So we state, may it please Your Honor, that these witnesses were called here. We did not subpoena them; they were brought down to testify as to this damage which they suffered, and in that question of damages was involved the question of mitigation, which of course must be brought out or raised by the defendant or respondent on cross-examination. That is exactly what they did here, and the authorities are cited. You have my letter, I believe?

The Court: Yes, I have your letter.

Mr. Carr: Which sets forth the authorities. In that first case, Picking vs. Pennsylvania, cited there, it holds generally a party is not entitled to witness fees and mileage on his own attendance. He came here to prove his case. Your Honor will recall that this case was opened in order to permit them to prove the amount of damages that they suffered. The fact that Mr. Herrington may have stipulated what the witnesses would have earned had they been employed during the period in question of course is just the same as proof. He did not obviate and did not intend to obviate the question of cross-examination. So with those authorities, Your Honor, it would seem to us that these parties were not entitled to costs. We did not bring them here. We would never have had to examine them at all except that they were making these claims for amounts of wages for the time they were unemployed after their dismissal, so that if they had not elected to prove or claim those amounts, then of course it would not have affected the defendant in

the least; but inasmuch as they elected to claim them, they of course subjected themselves to cross-examination and they are not witnesses in the true sense for the defendant. They are their own witnesses, proving their case, subjecting themselves to cross-examination. And if that be true, any witness cross-examined would become entitled, immediately, even though he was a party to the action, would become immediately entitled to costs.

I respectfully submit, Your Honor, that the points are well taken.

Mr. Gochnauer: May I reply briefly, Your Honor? In one of those letters to Mr. Evensen which you have before you, I pointed out to him that with respect to that $4 item on the transcript, it was within the language of the Judicial Code. I think my letter states that that is a recent amendment to the Judicial Code. I apprehend that the cases that Mr. Carr is talking about were prior to that amendment. I think it appears——

Mr. Carr: When was the amendment?

Mr. Gochnauer: I think it is in my letter, Mr. Carr.

Mr. Carr: Judge Goodman's decision in this Burnham case was in '47, I think.

Mr. Gochnauer: We are talking about the statute here. I think it was in '48 that this language was incorporated.

With respect to the transcript Mr. Carr just read, he only read you part of it, and if the Court would like to hear it, I will borrow his copy and read you the rest.

The Court: All right.

Mr. Gochnauer: May I have that?

Mr. Carr: Yes, certainly.

Mr. Gochnauer: Page 519.

The Court: Counsel, you take the position that the amounts of wages were ascertainable from the Debtor's records?

Mr. Gochnauer: That is correct, and that any matter as to mitigation on that was a matter of defense, and I was forced to bring these people down here so that they could have the privilege of cross-examining them. When they got down here, in my opening remarks, I did not anticipate that they would stipulate, and I therefore said that they were here so they could cross-examine him, but when Mr. Herrington then stipulated to the amounts, I had no further testimony to offer.

Mr. Carr: Of course you don't mean that you could foreclose our cross-examination when mitigation could only be proved by mitigation, and mitigation was raised.

Mr. Goochnauer: The question, Mr. Carr, is whether you called them for cross-examination or whether you called them as your witnesses.

Mr. Carr: That would make no difference; if we did call them as our witnesses, they were our witnesses for cross-examination.

Mr. Gochnauer: If you called them as your witnesses for cross-examination, they were still your witnesses.

Mr. Carr: No, they were for cross-examination; they were for cross-examination.

Mr. Gochnauer: I was there contending that he was foreclosed from cross-examination, but that in order that this proceeding might not be drawn out interminably, I did not object to his questioning on mitigation.

Mr. Carr: You could not have objected, because mitigation can only be shown by cross-examination, and the fact of what our books showed would not entitle you just from that fact to judgment; you would have nevertheless been obliged to put in proof of the amount of damages. You could not, because our books may have shown that the wages were at the time—that was not proof of what the wages might have been during the period in question.

Mr. Gochnauer: Reading from the transcript of that proceeding of May 1st, Your Honor. After my preliminary statement, I said:

"May I proceed to produce the witnesses?

"The Court: I think I understand pretty much the issue, counsel, with that statement. Do you have any further statements, gentlemen?

"Mr. Carr: No, I haven't.

"The Court: You can proceed with the testimony.

"Mr. Gochnauer: I have been unable to get any stipulation, Your Honor.

"Mr. Herrington: Your Honor, may I make one suggestion? As far as the amounts claimed by these petitioners are concerned, Mr. Gochnauer has furnished us with the figures. We have checked them as far as the books of the company are concerned.

The difference is just picayunish, so far as I am concerned. I don't even care to go into the question of what these men could have earned because the difference between our books and their claims all told is so trivial that it isn't very much. For all practical purposes, they are identical.

"I think the only issue here is on mitigation of damages. Mr. Carr can enlighten you on that.

"The Court: Do I take it, gentlemen, that it will be stipulated by and between the parties hereto that the total amounts of the claim or claims of the respective parties hereto are stipulated to the amounts indicated by counsel for the petitioners?

"Mr. Herrington: I guess there is nothing before Your Honor showing the exact amount.

"The Court: Well, I assume you have some summary, have you?

"Mr. Herrington: ——giving a statement, and that statement is satisfactory.

"Mr. Gochnauer: Your Honor, I wish that I had been able to obtain a stipulation earlier. I have not been able to obtain it on behalf of all counsel for the Trustee, and I am very glad to have it.

"The Court: Who must stipulate to the condition now?

"Mr. Gochnauer: Well, I assume now that Mr. Herrington is speaking for Mr. Carr also.

"Mr. Carr: In this situation, yes.

"The Court: Then I suggest, counsel, in aid of facilitating the hearing, the time of court and counsel, that you might make a summary or compilation of the total amount or amounts of the claims of

these petitioners or claimants and file same with the Court after the approval in writing of counsel.

"The question then before the Court is mitigation. You may proceed on that phase.

"J. W. NORBERG

a witness called on behalf of respondent, being first duly sworn, testified as follows:

"The Clerk: Please state your name, address and occupation to the Court.

"The Witness: J. W. Norberg, Cloverdale, tallyman.

"Mr. Gochnauer: If Your Honor please, I take it there is no obligation on my part to prove Mr. Carr's contention.

"The Court: To what?

"Mr. Gochnauer: There is no obligation on our part, no part of our case, to prove that these people did seek other employment.

"The Court: You come into Court clothed with a certain presumption or prima facie showing, I would say, by reason of the fact these men have received unemployment compensation. I think the burden is upon the respondents here to take up the cross-examination if they are so advised.

"Mr. Gochnauer: Well, I have no examination in chief, if Your Honor please, because it is not part of my case. The issue of amount of damages was not presented by the pleadings in the original hearing, it was not testified to, there isn't a word of testimony in the record on the subject.

"Mr. Herrington: If Your Honor please, I will

call Mr. Norberg as a witness on behalf of respondent."

Mr. Carr: That is all right.

Mr. Gochnauer: "Direct Examination," question by Mr. Herrington of Norberg, which shows cross-examination by me as to unemployment compensation, with direct examination by Mr. Herrington, and the same with respect to each of the eleven people.

Mr. Carr: That is all right; that is all right, Your Honor. They were called, as Your Honor said, for cross-examination. They set the standard of the case, the rule of the case. They were called for cross-examination.

The Court: The matter is submitted. May I have these documents left here?

Mr. Gochnauer: Yes, Your Honor, I have my own office copies.

The Court: They will be returned to you.

Mr. Carr: Is the cost bill in there?

The Court: Yes, I have everything.

Mr. Gochnauer: Yes. Thank you.

The Court: I will make a note that these are to be returned. Recess until two o'clock.

Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 19 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ W. A. FOSTER.

[Endorsed]: Filed September 17, 1952.

DEBTOR'S EXHIBIT F

Incorporated Under the Laws
of the State of Nevada

CLASS "A"
COMMON STOCK CERTIFICATE

Number 300 One Share

Coastal Plywood & Timber Company

This Certifies That.....is the owner of One fully paid and non-assessable Share of the Class "A" Common Capital Stock of

Coastal Plywood & Timber Company

of the par value of $2,500 each, transferable on the books of the company by the holder hereof in person or by duly authorized Attorney, upon surrender of this certificate properly endorsed.

The designations, preferences and relative participating and other special rights of the company's authorized classes of stock and the qualifications, limitations or restrictions of such rights are contained in Articles IV and V of the Amended Articles of Incorporation of the company, copies of which are set forth on the reverse side of this certificate.

Restrictions upon the transfer of the Share represented by this certificate are contained in Article IX of the Amended Articles of Incorporation of the company, copy of which is set forth on the reverse side of this certificate.

In Witness Whereof, the said Corporation has caused this certificate to be signed by its duly au-

Debtor's Exhibit F—(Continued)

thorized officers and its corporate seal to be hereunto affixed this.....day of....., 19....

.....,
President.

.....,
Secretary.

Articles IV and V of the Amended Articles of Incorporation of Coastal Plywood & Timber Company provide:

Article IV.

The total number of shares of capital stock that may be issued by this corporation is eight hundred (800) shares of common stock divided into two classes:

(a) Four hundred (400) shares of Class "A" stock of the par value of Twenty-five Hundred Dollars ($2,500.00) each;
(b) Four hundred (400) shares of Class "B" stock without nominal or par value.

The Class "B" stock shall be distinguished from Class "A" stock in that it shall have voting privileges in the election of Directors, only as set forth in the succeeding Article V.

The Class "A" stock shall be entitled to receive one-half of all dividends declared and to receive one-half of any lawful distribution to stockholders of assets of the corporation, whether such distribu-

Debtor's Exhibit F—(Continued)

tion be partial or complete and whether on final liquidation or otherwise and whether voluntary or involuntary.

The Class "B" stock shall be entitled to receive one-half of all dividends declared and to receive one-half of any lawful distribution to stockholders of assets of the corporation, whether such distribution be partial or complete and whether on final liquidation or otherwise and whether voluntary or involuntary. Any such dividends or distribution of assets, shall first be allocated equally, that is, one-half to Class "A" stock and one-half to Class "B" stock, and the share of each class shall then be apportioned equally among the stockholders, entitled to participate, of each class of stock.

Class "A" stock shall be issued, sold and transferred, whether by operation of law or otherwise, only in accordance with Article IX below.

The capital stock, after the amount of the subscription price, or par value, has been paid in, shall not be subject to assessment to pay the debts of the corporation.

Subscriptions for Class "A" stock may be accepted, subject to the provisions of Article IX herein, upon such terms and conditions as a majority of those directors elected by or representing Class "A" stockholders, may determine from time to time. No subscriber shall be entitled to a certificate of stock, until the subscription price is paid in full according to its terms, but so long as he is not in default in any of the terms of his subscription

Debtor's Exhibit F—(Continued)

agreement, he shall be entitled to vote as a Class "A" stockholder and shall be credited with any dividends declared on Class "A" stock, upon the purchase price of the stock.

Article V.

The number of Directors of this corporation is and shall be twelve (12). The holders of Class "A" stock shall be entitled to elect nine (9) of such Board of Directors and the holders of Class "B" stock shall be entitled to elect three (3) Directors. The terms in office and qualifications of all Directors shall be determined and set forth in the By-laws.

The number of Directors shall not be decreased or increased.

Article IX.

Article IX provides:

In view or the particular nature of this corporation and the contribution to the success thereof expected to ensue from the plan of identifying the management personnel and employees with Class "A" stock ownership, no shares of Class "A" stock may be issued except as follows:

One share of such stock only can be issued to or owned by any stockholder, and such stockholder must be an active employee, or a person acceptable to the Board of Directors as a future active employee of the Corporation.

It is further provided that:

(a) No owner of Class "A" stock may sell,

Debtor's Exhibit F—(Continued)

transfer or assign his share until and unless he first gives to the Corporation's President or Secretary written notice of his intention to sell, transfer or assign, setting forth in such notice the number of the certificate therefor and the name and residence of the person who is the holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors shall, for a period of 60 days after receipt of such written notice, have the sole and exclusive option of purchasing said share at the bona fide market value, as hereinafter defined. Payment for such share may be made by the Board of Directors by depositing said bona fide market value to the credit of such shareholder in any National Bank in Cloverdale, California, or San Francisco, California, to be paid to such shareholder by said bank upon the surrender of the certificate for said share of Class "A" stock properly endorsed; the Board shall give written notice of such deposit to the shareholder (by registered mail addressed to the person and address given in the stockholder's notice).

(b) Any person acquiring through will, descent, or by conveyance to take effect at death, or sale in the administration of any estate, any share of Class "A" stock of the Corporation shall be bound to give written notice of such acquisition to the President or Secretary of the Corporation, setting forth in such notice the number of the certificate, the name of the registered holder, and the name and residence

Debtor's Exhibit F—(Continued)

address of the person acquiring such share, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors, for a period of 60 days after receipt of such notice, shall have an exclusive option of purchasing such share at the bona fide market value, as hereinafter defined. The person so acquiring said share shall be notified of the exercise of said option and paid therefor in the manner prescribed in subparagraph (a).

(c) The purchaser of any share of Class "A" stock sold on execution or any other sale by operation of, or under authority of, law and the pledgee of any share of Class "A" stock before bringing any suit action, or proceeding or doing any act to foreclose his pledge shall first deliver to the President or Secretary of the Corporation written notice of such purchase or intention to foreclose, designating the number of the certificate and the name and residence address of the pledgee or the present holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors shall have the sole and exclusive option, for a period of 60 days after receipt of such notice, to purchase said shares at the bona fide market value, as hereinafter defined. Notice of the exercise of said option and payment to be accomplished in the manner hereinabove prescribed in subparagraph (a).

(d) On behalf of the Corporation the Board of

Debtor's Exhibit F—(Continued)

Directors shall have the sole and exclusive option to purchase from any holder of Class "A" stock who shall fail to report for work within sixty (60) days after the mailing to him, by registered mail, of written call to report for work, or who shall voluntarily or involuntarily cease to be employed by the Corporation by reason of discharge, retirement, resignation, disability or any other reason whatsoever, the share of stock of such holder at the bona fide market value, as hereinafter defined, for a period of 60 days from such failure to report or such cessation of employment. Notice of the exercise of said option and payment to be accomplished in the manner prescribed in subparagraph (a).

The specific provisions governing discharge, retirement, or disability shall be set forth in the By-laws.

(e) Shares of Class "A" stock shall give to the holder thereof no power to vote thereon and no right to dividends declared thereon subsequent to notification by the Corporation of its exercise of option to purchase under the terms and conditions defined in subparagraphs (a), (b), (c) and (d) above. Upon a stockholder's refusal to surrender his certificate, the Corporation, after making proper deposit of payment, may cancel such certificate.

(f) Shares of Class "A" stock acquired by the Corporation under the provisions of subparagraphs (a), (b), (c) and (d) above may be resold only to persons who are or agree to become employees of the Corporation who own no Class "A" stock, lim-

Debtor's Exhibit F—(Continued)

iting such resales to one share of Class "A" stock per employee.

(g) Bona fide market value is defined as follows:

(1) The Board of Directors and the person desiring to sell or foreclose may agree upon the bona fide market value at which the Corporation shall repurchase the stock.

(2) In the event said bona fide market value is not agreed upon it shall be determined by an appraisal made by a majority of three appraisers who shall be selected, one by any owner, holder or pledgee referred to in (a), (b), (c) and (d) above, one by the Board of Directors, and one by the two appraisers thus selected. If the two appraisers so selected shall not, within 20 days of their selection, agree upon the third appraiser, either party may apply, upon 5 days' written notice to the other, to any judge of any court of general jurisdiction in Sonoma or Mendocino counties, California, for the appointment of such third appraiser. The three appraisers so selected shall, within 20 days after the third appraiser is selected, appraise such shares and give written notice thereof to both parties, any expenses of appraisal to be paid one-half by each party. The Corporation's 60-day option to purchase, as set forth in (a), (b), (c) and (d) above, shall be extended by the time required for selection of appraisers and appraisement.

(3) Bona fide market value shall be determined as of the date the Corporation receives the written notice referred to in subparagraphs (a), (b) and

Debtor's Exhibit F—(Continued)

(c) above, or sends the written notice provided for in subparagraph (d) above.

(h) If the Corporation fails to exercise or waives its option to purchase said stock as provided for in this Article IX, said stock may be sold or transferred at any price agreed upon between the holder and the transferee, provided only, that such transferee is an active employee holding no Class "A" stock or is a person acceptable to the Board of Directors as a future active employee of the Corporation.

For Value Received.....hereby sell, assign, and transfer unto.....the One Share of the Capital Stock represented by the within certificate, and do hereby irrevocably constitute and appoint.....Attorney to transfer the said Stock on the books of the within-named Corporation with full power of substitution in the premises.

Dated.....19...

.....

In presence of

.....

Notice: The signature of this assignment must correspond with the name as written upon the face of the certificate in every particular without alteration or enlargement or any change whatever.

Filed Feb. 13, 1952.

DEBTOR'S EXHIBIT G

In the Superior Court of the State of California
in and for the County of Sonoma

No. 34697, Dept No. 1

ALBERT L. SILVA, EDWIN VLASAK, JERRY CLEARY, CECIL A. SMITH, WESLEY M. REED, GLEN W. REED, C. FRANK TILESTON, JR., OSCAR ADAMS, LOUIS MERRYMAN, FRITZ PETERSON, SYDNEY T. BOYCE, ALLEN L. WILLIAMS, R. ALTARRIBA, EARL CONWAY, EDWIN BRANDT, K. S. JOHANSON and GEORGE A. BRATSBERG,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation; and J. W. NORBERG, MILO BARNHART, FLOYD JACKSON, NELS SUNDEEN, DEWEY JONES, K. E. BURKES, THOMAS A. SIMMONS, BILL C. G. CLARK, FRANK ASTELL, as Directors, and L. M. HAMPTON,

Defendants.

COMPLAINT TO ENJOIN TRANSFER OF STOCK

Plaintiffs complain of defendants and for cause of action allege as follows:

Debtor's Exhibit G—(Continued)

I.

Defendant Coastal Plywood and Timber Company is a corporation organized and existing under the laws of the State of Nevada, maintaining its office and principal place of business in the Town of Cloverdale, County of Sonoma, State of California.

At the times herein mentioned, defendants J. W. Norberg, Milo Barnhart, Floyd Jackson, K. E. Burkes, Nels Sundeen, Dewey Jones, Frank Astell, Thomas A. Simmons and Bill C. G. Clark constituted and now constitute the Board of Directors of said corporation. Defendant J. W. Norberg is the president of said corporation.

Each of the plaintiffs is the owner and holder of one share of the capital stock of said corporation. The total number of shares of the capital stock of said corporation issued and now outstanding is 250 shares.

There is only one class of stock issued by said corporation and now outstanding.

II.

The original Articles of Incorporation of said corporation, as well as the amended Articles of Incorporation thereof, in Article IX thereof, contain the following provisions:

"In view of the particular nature of this corporation and the contribution to the success thereof expected to ensue from the plan of identifying the management personnel and employees with stock

Debtor's Exhibit G—(Continued)

ownership, no shares of stock may be issued except as follows:

"One share of stock only can be issued to or owned by any stockholder, and such stockholder must be an active employee, or a person acceptable to the Board of Directors as a future active employee of the corporation."

It is further provided that:

"(a) No owner of stock may sell, transfer or assign his share until and unless he first gives to the corporation's President or Secretary written notice of his intention to sell, transfer or assign, setting forth in such notice the number of the certificate therefor and the name and residence of the person who is the holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the corporation the Board of Directors, shall, for a period of 60 days after receipt of such written notice, have the sole and exclusive option of purchasing said share at the bona fide market value, as hereinafter defined. Payment for such share may be made by the Board of Directors by depositing said bona fide market value to the credit of such shareholder in any National Bank in Cloverdale, California, or San Francisco, California, to be paid to such shareholder by said bank upon the surrender of the certificate for said stock properly endorsed; the Board shall give written notice of such deposit to the shareholder (by registered mail addressed to the person and address given in the stockholder's notice)."

Debtor's Exhibit G—(Continued)

Not more than one share of the stock of defendant corporation has been issued to any one stockholder and only one share of stock is owned by each of the stockholders of said corporation.

III.

Plaintiffs are informed and believe, and upon such information and belief allege the fact to be that one L. M. Hampton, with the knowledge and approval of a majority of the defendants, as solicited and procured written options to purchase the stock of at least fifty-one per cent of the stockholders of defendant corporation, and said stockholders intend to sell said stock to said L. M. Hampton and the said defendants threaten to and will, unless restrained by this Court, transfer said stock so optioned upon the books of defendant corporation and cause new certificates of stock of defendant corporation to be issued to the said L. M. Hampton for more than one share of said stock.

Said L. M. Hampton is not an active employee of said corporation nor does the said L. M. Hampton contemplate becoming an active employee of said corporation.

Plaintiffs further allege that in the event the said defendants permit the said L. M. Hampton or any other person to become the owner and holder of more than one share of the capital stock of said corporation and in the event the said defendants permit or cause more than one share of the capital stock of said corporation to be transferred and is-

Debtor's Exhibit G—(Continued)

sued to and in the name of one person, that the true intent and purpose of said corporation as expressed in its Articles of Incorporation will be subverted and destroyed and the rights of the plaintiff stockholders and others similarly situated with respect to said corporation and their interest therein will be destroyed and that great or irreparable injury to plaintiffs would result therefrom, and pecuniary compensation would not afford adequate relief to plaintiffs.

Plaintiffs are informed and believe and upon such information and belief allege the fact to be that defendant L. M. Hampton, with the knowledge and approval of a majority of the defendants who are directors of defendant Coastal Plywood and Timber Company has solicited the shareholders in said corporation to execute a proxy and extension of option in the words and figures as follows:

Proxy and Extension of Option

I, the undersigned, owner of one share of stock of Coastal Plywood & Timber Company, a Nevada corporation, hereby constitute and appoint L. M. Hampton, who now holds an option to purchase said share of stock, and Leslie C. Rogers, his attorney, or either of them, my proxy to vote said stock at any and all meetings of the stockholders of said corporation which may be held on or before June 14, 1953, with the same force and effect as I might do if personally present, hereby giving to each of my said proxies the right also to sign any

Debtor's Exhibit G—(Continued)

and all written consents to meeting, resolutions or other corporate matters; provided, however, that this proxy shall become effective only at such time as said L. M. Hampton, by virtue of this and other proxies or stock ownership, is entitled to exercise at least a majority of the voting power of said corporation.

Upon this proxy so becoming effective and upon payment to me of the sum of $40.00 on or before June 30, 1951, to be applied on the option price of said stock, the time for the exercise of said option shall be extended and regranted for a period of two years from and after June 14, 1951.

This proxy is coupled with an interest and upon becoming effective is expressly made irrevocable.

All proxies heretofore made or given by me are hereby revoked, upon this proxy becoming effective.

Dated:

.....,

Signature of Stockholder.

Witness:

.....

Plaintiffs are further informed and believe, and upon such information and belief allege the fact to be that defendant L. M. Hampton, with the knowledge and approval of a majority of the defendants directors of said corporation, has procured at least 51% of the holders of shares in said corporation to execute and deliver to him the said L. M. Hampton, documents of proxy and extension of option

Debtor's Exhibit G—(Continued)

in the same form as hereinabove written and that it is the intention of said stockholders so executing and delivering to L. M. Hampton said proxy and extension of option to sell and deliver to said L. M. Hampton their shares in said corporation.

Plaintiffs further allege that if defendant L. M. Hampton or his attorney Leslie C. Rogers is designated as proxy to vote 51% of the stock of said corporation at all or any meetings of the stockholders thereof, then and in that event the said defendant L. M. Hampton or his attorney Leslie C. Rogers will have the power to assume control of said corporation and to direct its activities and to elect a Board of Directors of said corporation and, unless restrained by this Court, will do so and in said event the true intent and purpose of said corporation as expressed in its Articles of Incorporation, will be subverted and destroyed and the rights of the plaintiff stockholders and others similiarily situated with respect to said corporation and their interests therein will be destroyed and that great or irreparable injury to plaintiffs would result therefrom and pecuniary compensation would not afford adequate relief to plaintiffs.

None of the plaintiffs in this action have executed a proxy and extension of option as set forth in this complaint or in any other form.

Wherefore, plaintiffs pray judgment as follows:

1. That the Court issue its order to show cause directed to the defendants requiring defendants to

Debtor's Exhibit G—(Continued)

appear and attend before the above Court to show cause why temporary restraining order should not be issued, restraining them from the acts contemplated as set forth in the foregoing complaint.

2. That the Court render its judgment enjoining the defendants from transferring capital stock upon the books of said corporation, or issuing shares of stock of said corporation contrary to the Articles of Incorporation thereof.

3. That the Court enjoin and restrain the defendants, their servants, attorneys or employees from soliciting the shareholders of said corporation to execute and deliver to L. M. Hampton proxy and extension of option as set forth herein or otherwise.

4. That the Court enjoin and restrain the defendant L. M. Hampton, his agents, servants, employees or attorneys from exercising proxies already executed and delivered to him in the form set forth in this complaint or otherwise.

5. That the Court enjoin and restrain the defendant corporation, its directors and officers from issuing to one person more than one share of the capital stock of said corporation.

6. For such other and further relief as to the Court shall seem proper in the premises.

7. For plaintiffs' cost incurred herein.

CLARENDON W. ANDERSON,
Attorney for Plaintiffs.

Debtor's Exhibit G—(Continued)

State of California,
County of Sonoma—ss.

R. R. Reeves, being first duly sworn, deposes and says: That he is one of the plaintiffs in the above-entitled matter; that he has read the foregoing Complaint and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

R. R. REEVES.

Subscribed and sworn to before me this 20th day of August, 1951.

[Seal] /s/ CLARENDON W. ANDERSON,
Notary Public in and for the County of Sonoma,
State of California.

Debtor's Exhibit G—(Continued)

(Copy)

In the Superior Court of the State of California in and for the County of Sonoma

No. 34697, Dept No. 1

ALBERT L. SILVA, EDWIN VLASAK, JERRY CLEARY, CECIL A. SMITH, WESLEY M. REED, GLEN W. REED, C. FRANK TILESTON, JR., OSCAR ADAMS, LOUIS MERRYMAN, FRITZ PETERSON, SYDNEY T. BOYCE, ALLEN L. WILLIAMS, R. ALTARRIBA, EARL CONWAY, EDWIN BRANDT, K. S. JOHANSON and GEORGE A. BRATSBERG,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation; and J. W. NORBERG, MILO BARNHART, FLOYD JACKSON, NELS SUNDEEN, DEWEY JONES, K. E. BURKES, THOMAS A. SIMMONS, BILL C. G. CLARK, FRANK ASTELL, as Directors, and L. M. HAMPTON,

Defendants.

SUMMONS

Action was taken in the Superior Court of the State of California, in and for the County of Sonoma, and the complaint was filed in the office of the County Clerk of the County of Sonoma.

Debtor's Exhibit G—(Continued)

The People of the State of California Send Greetings to

Coastal Plywood and Timber Company, a corporation, and J. W. Norberg, Milo Barnhart, Floyd Jackson, Nels Sundeen, Dewey Jones, K. E. Burkes, Thomas A. Simmons, Bill C. G. Clark, Frank Astell, as Directors, and L. M. Hampton, Defendants;

You Are Hereby Directed to Appear and Answer the complaint in an action entitled as above, brought against you in the Superior Court, State of California, in and for the County of Sonoma, within ten days after the service on you of this Summons—if served within this County; or within thirty days if served elsewhere.

And you are hereby notified that unless you appear and answer as above required, the said plaintiffs will take judgment for any money or damages demanded in the complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the complaint.

Given under my hand and the seal of said Superior Court this 27th day of August, 1951.

[Seal] WILLIAM E. CLAUS,
County Clerk,

By KATHRYN PEDGRIFT,
Deputy Clerk.

Debtor's Exhibit G—(Continued)

In the Superior Court of the State of California in and for the County of Sonoma

No. 34697, Dept. No. 1

ALBERT L. SILVA, et al.,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation, et al.,

Defendants.

DEMURRER

Come now the defendants Coastal Plywood and Timber Company, a corporation, and J. W. Norberg, Milo Barnhart, Floyd Jackson, Nels Sundeen and Dewey Jones, individually and as directors of said defendant corporation, and L. M. Hampton, and demurring to the complaint on file herein, for grounds of demur specify:

I.

Said complaint does not state facts sufficient to constitute a cause of action against defendants, or any of them.

II.

Said complaint is uncertain in this that it does not appear therein nor can it be ascertained therefrom

(a) why the Articles of Incorporation of the defendant corporation, specifically Article IX, can-

Debtor's Exhibit G—(Continued)

not be amended so as to permit the sale and transfer of the optioned stock to the defendant L. M. Hampton;

(b) whether the defendant Hampton intends to purchase said stock or whether the remaining defendants intend to transfer the same to the said Hampton prior to valid amendment of said Articles of Incorporation to permit such purchase and transfer;

(c) what was the true intent or purpose of said defendant corporation as expressed in its Articles of Incorporation, specifically Article IX thereof;

(d) how or in what manner such intent or purpose will be subverted or destroyed if more than one share of the capital stock of said corporation is transferred and issued to the said Hampton;

(e) how or in what manner any rights of the plaintiff stockholders, or any of them, with respect to said corporation or their interest therein, will thereby be destroyed;

(f) how or in what manner plaintiffs, or any of them, will be injured by the purchase by the said Hampton of the optioned stock or its tranfer to him;

(g) why the said Hampton should be prevented from exercising the proxies held by him or from voting the stock represented thereby;

(h) why the said Hampton is not entitled to ex-

Debtor's Exhibit G—(Continued)

ercise said proxies and vote said stock in any manner authorized by law;

(i) how or in what manner or in what respects the said proxies held by Hampton fail to constitute him the lawful proxy for the stock in the defendant corporation represented thereby;

(j) how or in what manner the control of said corporation by the said Hampton or the power on the part of the said Hampton to direct its activities will subvert or destroy the true intent or purpose of said corporation or the rights of the plaintiff stockholders, or any of them;

(k) how or in what manner the control of said corporation by the said Hampton or the power on his part to direct its activities will subvert or destroy the rights of the plaintiff stockholders, or any of them, with respect to said corporation or their interests therein, or result in any injury to plaintiffs, or any of them; and

(l) how or in what manner plaintiffs or their stock interests will be injured by the said Hampton assuming control of said corporation or directing its activities.

III.

Said complaint is ambiguous in the same respect and for the same reasons as it is above stated to be uncertain.

IV.

Said complaint is ambiguous in the same respects

Debtor's Exhibit G—(Continued)

spects and for the same reasons as it is above stated to be uncertain.

Wherefore, these defendants pray that plaintiffs take nothing by virtue of their said complaint and that defendants, and each of them, be dismissed hence with their costs of suit herein incurred and with such other and further relief as to the Court may seem meet and equitable in the premises.

Dated: September 24, 1951.

WEBSTER V. CLARK,

H. SCOTT GOODFELLOW,

ROGERS and CLARK,

By WEBSTER V. CLARK,

Attorneys for Defendants Coastal Plywood and Timber Company, a Corporation; J. W. Norberg, Milo Barnhart, Floyd Jackson, Nels Sundeen, Dewey Jones and L. M. Hampton.

Debtor's Exhibit G—(Continued)

In the Superior Court of the State of California, in and for the County of Sonoma

No. 34697—Dept. No. 1

ALBERT L. SILVA, EDWIN VLASAK, JERRY CLEARY, CECIL A. SMITH, WESLEY M. REED, GLEN W. REED, C. FRANK TILESTON, JR., OSCAR ADAMS, LOUIS MERRYMAN, FRITZ PETERSON, SYDNEY T. BOYCE, ALLEN L. WILLIAMS, R. ALTARRIBA, EARL CONWAY, EDWIN BRANDT, K. S. JOHANSON, GEORGE A. BRATSBERG and R. R. REEVES,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation, and J. W. NORBERG, MILO BARNHART, FLOYD JACKSON, NELS SUNDEEN, DEWEY JONES, K. E. BURKES, THOMAS A. SIMMONS, BILL C. G. CLARK, FRANK ASTELL, as Directors, and L. M. HAMPTON,

Defendants.

ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDER

Upon reading and examining the verified complaint of plaintiffs on file in this action, and the affidavit of R. R. Reeves, and it appearing to the satisfaction of the Court therefrom that this is a

Debtor's Exhibit G—(Continued)

proper case for granting a temporary restraining order, and that unless the temporary restraining order prayed for in said complaint and said affidavit be granted great injury will result to the plaintiff before the matter can be heard on notice; now therefore

It Is Hereby Ordered that the defendants be and appear before this Court in the Courtroom of Department One thereof at the hour of 10 o'clock a.m. on the 14th day of September, 1951, then and there to show cause if any they have why they and each of them, their agents, servants, employees and attorneys should not be enjoined and restrained during the pendency of this action

1. From amending Article IX of the Articles of Incorporation of Coastal Plywood & Timber Company to the extent that shares thereof may be sold and transferred by operation of law or otherwise without any restriction and any person may own any number of shares in said corporation.

2. Restraining the defendant, L. M. Hampton, his agents, servants, employees or attorneys from exercising proxys to vote shares of said corporation.

3. Restraining the defendant corporation, its directors and officers from issuing to one person more than one share of the capital stock of said corporation.

It Is Further Ordered that pending the hearing of this order to show cause that defendants and

Debtor's Exhibit G—(Continued)

their, and each of their agents, servants, employees and attorneys be, and they are enjoined and restrained from

1. Amending Article IX of the Articles of Incorporation of Coastal Plywood & Timber Company to the extent that shares thereof may be sold and transferred by operation of law or otherwise without any restriction and any person may own any number of shares in said corporation.

2. Restraining the defendant, L. M. Hampton, his agents, servants, employees or attorneys from exercising proxys to vote shares of said corporation.

3. Restraining the defendant corporation, its directors and officers from issuing to one person more than one share of the capital stock of said corporation.

It Is Further Ordered that a copy of the complaint and the affidavit of R. R. Reeves, if they have not already been served, be served on the defendants not later than the 8th day of September, 1951.

The bond on this restraining order is $1,500.00, which bond has been presented to the Court and approved at the time of signing this order.

Dated: This 7th day of September, 1951.

DONALD GEARY,
Judge of the Superior Court.

Debtor's Exhibit G—(Continued)

In the Superior Court of the State of California
in and for the County of Sonoma

No. 34697—Dept. No. 1

ALBERT L. SILVA, EDWIN VLASAK, JERRY CLEARY, CECIL A. SMITH, WESLEY M. REED, GLEN W. REED, C. FRANK TILESTON, JR., OSCAR ADAMS, LOUIS MERRYMAN, FRITZ PETERSON, SYDNEY T. BOYCE, ALLEN L. WILLIAMS, R. ALTARRIBA, EARL CONWAY, EDWIN BRANDT, K. S. JOHANSON, GEORGE A. BRATSBERG and R. R. REEVES,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation, and J. W. NORBERG, MILO BARNHART, FLOYD JACKSON, NELS SUNDEEN, DEWEY JONES, K. E. BURKES, THOMAS A. SIMMONS, BILL C. G. CLARK, FRANK ASTELL, as Directors, and L. M. HAMPTON,

Defendants.

AFFIDAVIT IN SUPPORT OF TEMPORARY RESTRAINING ORDER

State of California,
County of Sonoma—ss.

R. R. Reeves, being duly sworn, says:

I am one of the plaintiffs in the above action.

Debtor's Exhibit G—(Continued)

Subsequent to the filing of the complaint herein and on the 28th day of August, 1951, the Board of Directors of defendant Coastal Plywood and Timber Company held a meeting at the office of said corporation, and at said time passed a resolution in the following form:

Resolution Amending Articles

(Authorizing Amendment to Articles of Incorporation and holding of stockholders meeting September 9, 1951.)

Resolved, by the Board of Directors of this corporation, Coastal Plywood & Timber Company, a Nevada corporation, that Article IX of the articles of incorporation of this corporation be amended to read as follows:

Article IX

"Share of stock of this corporation may be sold and transferred by operation of law or otherwise without any restriction, and any person may own any number of said shares."

and

Resolved, Further, that the Board of Directors of this corporation hereby declares that said amendment is advisable and hereby calls a meeting of the stockholders of this corporation, to be held on the 9th day of September, 1951, at the hour of 10:00 o'clock a.m., of said day, at the Druid's Temple on the west side of West Street, between First and Second Streets, in Cloverdale, Sonoma County, Cali-

Debtor's Exhibit G—(Continued)

fornia, for the purpose of considering and acting upon such amendment; and

Resolved, Further, that the President of this corporation be and he is hereby designated to give notice of said meeting of stockholders in the manner prescribed by law.

Pursuant to said resolution, the president of said corporation has issued a call for a stockholders meeting of said corporation to be held on the 9th day of September, 1951, at the hour of 10:00 o'clock a.m. of said day, and that unless restrained from so doing and under the guidance and direction of the officers and directors of said corporation, affiant believes that said corporation and its stockholders will hold said meeting and amend Article IX of the Articles of Incorporation of defendant Coastal Plywood & Timber Company as set forth in the foregoing resolution.

Time does not permit a motion for preliminary injunction after notice and prior to the 9th day of September, 1951.

Affiant further alleges that an amendment to Article IX of the Articles of Incorporation of defendant Coastal Plywood & Timber Company as above set forth would be in violation of the rights of plaintiff's in this action, respecting the subject of the action, and would tend to render any judgment herein ineffectual and cause great or irreparable injury to the plaintiffs before the matter can be heard on notice. That a restraint on the proposed actions of the defendant's is further necessary to

Debtor's Exhibit G—(Continued)

prevent a multiplicity of judicial proceedings within the framework of this case and otherwise.

Wherefore, affiant prays that the above court issue its Temporary Restraining Order enjoining the defendants herein from holding a stockholders meeting of the stockholders of the Coastal Plywood & Timber Company on the 9th day of September, 1951, restraining said defendants from amending Article IX of the Articles of Incorporation of defendant Coastal Plywood & Timber Company in the manner and form specified in the resolution herein mentioned.

That in conformity with the prayer of the verified complaint on file herein the above court enjoin and restrain defendant L. M. Hampton or his agents, servants, employees or attorneys from exercising proxies to vote the stock of defendant Coastal Plywood & Timber Company at a stockholders meeting on September 9, 1951, or at all.

R. R. REEVES.

Subscribed and sworn to before me this 5th day of September, 1951.

[Seal] CLARENDON W. ANDERSON,
Notary Public in and for the County of Sonoma, State of California.

Debtor's Exhibit G—(Continued)

In the Superior Court of the State of California in and for the County of Sonoma

No. 34697—Dept. No. 1

ALBERT L. SILVA, EDWIN VLASAK, JERRY CLEARY, CECIL A. SMITH, WESLEY M. REED, GLEN W. REED, C. FRANK TILESTON, JR., OSCAR ADAMS, LOUIS MERRYMAN, FRITZ PETERSON, SYDNEY T. BOYCE, ALLEN L. WILLIAMS, R. ALTARRIBA, EARL CONWAY, EDWIN BRANDT, K. S. JOHANSON, GEORGE A. BRATSBERG and R. R. REEVES,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation, and J. W. NORBERG, MILO BARNHART, FLOYD JACKSON, NELS SUNDEEN, DEWEY JONES, K. E. BURKES, THOMAS A. SIMMONS, BILL C. G. CLARK, FRANK ASTELL, as Directors, and L. M. HAMPTON,

Defendants.

POINTS AND AUTHORITIES ON TEMPORARY RESTRAINING ORDER

It appears from the complaint on file and from the affidavit in support of the temporary restraining order that the defendants, by their proposal to amend the articles of incorporation of Coastal Plywood & Timber Company, are about to act in viola-

Debtor's Exhibit G—(Continued)

tion of the rights of the plaintiffs respecting the subject matter of this action, and if the defendants carry out their purpose as suggested such action on their part would tend to render any judgment herein ineffectual.

A restraint upon the defendants is necessary to protect the rights of the plaintiffs.

Restraint of the proposed action of the defendants is likewise necessary to prevent a multiplicity of judicial proceedings. Sec. 526 C.C.P.

The amendment to the articles of incorporation of Coastal Plywood & Timber Company as proposed by the defendants will amount to the destruction or impairment of the vested or contract rights of plaintiff stockholders. This the corporation may not do.

The articles may not be amended so as to change the nature and purposes of the corporation or to create an entirely different kind of corporation. Midland Co-operative Wholesale v. Range Co-operative Oil Ass'n., 274 N.W. 624. Hueftle, et al., v. Farmers Elevator, et al., 16 N.W. (2nd) 855.

The fact that the right to amend the articles is reserved does not add to the power of the corporation to amend. The right so reserved is general in terms. It is not within the scope of the reserved power to amend to accomplish a change so fundamental and radical as that proposed. Midland Co-operative Wholesale v. Range Co-operative Oil Ass'n., 274 N.W. 624. Hueftle, et al., v. Farmers Elevator, et al., 16 N.W. (2nd) 855.

CLARENDON W. ANDERSON,
Attorney for Plaintiffs.

Debtor's Exhibit G—(Continued)

In the Superior Court of the State of California
in and for the County of Sonoma

No. 34697—Dept. No. 1

ALBERT L. SILVA, EDWIN VLASAK, JERRY CLEARY, CECIL A. SMITH, WESLEY M. REED, GLEN W. REED, C. FRANK TILESTON, JR., OSCAR ADAMS, LOUIS MERRYMAN, FRITZ PETERSON, SYDNEY T. BOYCE, ALLEN L. WILLIAMS, R. ALTARRIBA, EARL CONWAY, EDWIN BRANDT, K. S. JOHANSON, GEORGE A. BRATSBERG and R. R. REEVES,

Plaintiffs,

vs.

COASTAL PLYWOOD AND TIMBER COMPANY, a Corporation, and J. W. NORBERG, MILO BARNHART, FLOYD JACKSON, NELS SUNDEEN, DEWEY JONES, K. E. BURKES, THOMAS A. SIMMONS, BILL C. G. CLARK, FRANK ASTELL, as Directors, and L. M. HAMPTON,

Defendants.

ORDER AMENDING TITLE

Upon application by counsel for plaintiffs it being made to appear to the Court that the name of R. R. Reeves, one of the plaintiffs herein, was omitted from the title of the complaint through clerical error and good cause appearing therefor;

Debtor's Exhibit G—(Continued)

It Is Ordered that in all proceedings hereafter taken the said R. R. Reeves appear as one of the plaintiffs.

Dated: September 7th, 1951.

DONALD GEARY,
Judge of the Superior Court.

Marked for identification.

DEBTOR'S EXHIBIT H

Minutes of Special Meeting of Stockholders of Coastal Plywood & Timber Company
September 10, 1950

A special meeting of the stockholders of Coastal Plywood & Timber Company was held at the Grange Hall in Cloverdale, California, on the 10th day of September, 1950, pursuant to written notice of the time, place and purpose of said meeting duly given to all of the stockholders in accordance with the by-laws. The meeting was called to order by President Simmons at 10:45 a.m.

Thomas A. Simmons, President, with H. F. Tileston as Secretary, presided.

Roll call was taken at the door by the Secretary, assisted by Gladys Zimmerman in giving out the ballots and Edwin Vlasak in collecting the proxies.

Debtor's Exhibit H—(Continued)

Present were:

Stockholders Present in Person.....	98
Stockholders Present by Proxy.....	80
Total Stockholders Present	178

Also present were: Mr. Kenneth Moynihan, Assistant Cashier, Bank of America; Mr. M. J. Micheletti, Assistant Vice President, Bank of America; Mr. A. L. Shannon, Attorney at Law; and Mr. Martin T. Dyke, General Manager of the Corporation.

The President stated the purpose of the meeting was to consider and act upon bylaws drafted by Attorney Mr. Shannon, and approved by Bank of America and RFC.

Mr. Scott made a motion that the names be torn from the top of the ballot and signatures omitted, making the ballot a secret ballot. Motion was seconded.

Mr. Sutton moved that the motion be amended to call for a separate vote on each section of the bylaws, instead of a blanket vote. Motion was seconded. Vote was taken after discussion and motion to amend was lost. Main motion was carried.

The proposed bylaws were read by the Secretary, per attached copy.

The President called upon Mr. Moynihan, who stated that the Bank and the RFC have a total investment of some $2,600,000 now in this company, an amount which would represent their interest, being about 15 to 1 to the stockholders. The original loan has been in default for many months. In

Debtor's Exhibit H—(Continued)

fact, no repayment of any portion of the principal has ever been accomplished and only within recent months has the interest been paid and brought into current condition. He further stated that an additional $500,000 to improve and increase remanufacturing and drying facilities and other installations necessary to put the plant on a competitive basis with other mills, is required. This will increase the lending institutions' investment to approximately $3,000,000.00. He stated that they have advanced this company funds, far beyond the customary practices and are responsible to the Federal Reserve Bank and the F.D.I.C. for any and all loans made. He stated that if the Coastal Plywood & Timber Company desired the Bank of America and the Reconstruction Finance Corporation to continue to finance the Company in the future, as they had in the past, that the Bank and RFC's position was unequivocally requiring that the future operation of the Company be accomplished under a different set of bylaws—that is they were adamant in their statement that they would decline any future financing of any kind whatsoever, including the warehouse loan account and the accounts receivable account, unless the bylaws prepared by Mr. Shannon, reviewed and approved by the Bank and RFC, were adopted without delay nor changes. If the bylaws were adopted, and the present debts were liquidated, they would have no further interest in the operation or loans to protect, and therefore would have no objection to the company reverting to any new bylaws that they might then conclude to adopt.

Debtor's Exhibit H—(Continued)

Mr. Moynihan was asked if the Bank would consider the addition of a clause making provision for a grievance committee. He reported that such an amendment would only create further delay, which according to the September 2 letter of Mr. Marsden S. Bloise, Vice-President of the Bank of America, would preclude further financial assistance of the bank; but he suggested that it would be the prerogative of the Board and Management to provide for a grievance committee and the bank would have no objection.

Mr. Blois's letter of September 2 was read by the Secretary as follows:

September 2, 1950.

Mr. Thomas A. Simmons, President
Coastal Plywood & Timber Company,
Cloverdale, California.

Dear Mr. Simmons:

We understand that the proposed modification of your bylaws along the lines discussed with you by the Reconstruction Finance Corporation and ourselves are to be made effective at your scheduled meeting September 10, 1950.

The only purpose of this letter is to impress upon you and your stockholders the necessity of taking early affirmative action on these proposed changes. As you know, the loans of the Coastal Plywood & Timber Company are in default. The Reconstruction Finance Committee has told us very plainly that there will be no further loans granted unless certain changes with which you are familiar, and

Debtor's Exhibit H—(Continued)

which have been worked out by your counsel Mr. Shannon, are made effective. If your stockholders should fail to approve these changes at their September meeting, or postpone action on them, we must insist that no further construction or expansion be permitted.

As both Mr. Wagner and the writer explained to you at the time of our meeting, you have two alternatives; first, raise the $1,425,000 necessary to retire the Reconstruction Finance Corporation loans, plus an amount sufficient to repay the Reconstruction Finance Corporation and the bank for funds advanced for the timber purchase; or, second, accept the conditions prescribed by the Reconstruction Finance Corporation for carrying on the present indebtedness and obtaining through the Reconstruction Finance Corporation the additional funds to complete the timber purchase and finance the proposed expansion of milling facilities.

If the proposed changes in the bylaws are not approved promptly our bank is unwilling to undertake any further interim financing as we know that the Reconstruction Finance Corporation guarantee would leave us unprotected should it be necessary to close down this operation through the failure of the stockholders to cooperate with the program which has been set up.

Sincerely yours,

/s/ MARSDEN S. BLOIS,
Vice President.

Debtor's Exhibit H—(Continued)

After further discussion, Mr. Fuchs moved the previous question. Seconded and carried by a large majority.

The ballots were marked at this time and the President appointed a balloting committee consisting of: Gertrude Widenoja, Chairman, Ruben Carlson, Frank Astell, Eric Freed. Ballots were counted and the following report given:

Required for adoption	126
Votes in favor	136
Votes against	38
Total votes cast	174

The question of the adoption of the proposed by-laws was carried and it was so ordered.

A vote of thanks was extended to the visitors.

The meeting was adjourned at 1:15 p.m.

/s/ H. F. TILESTON,
Secretary.

ht
cc: All stockholders.

Amended By-Laws of
Coastal Plywood & Timber Company

9/10/50

Article I.

Place of Business

The principal office in the State of Nevada for the transaction of the business of the corporation shall

Debtor's Exhibit H—(Continued)

be located at Room 1, Blitz Building, 43 Sierra Street, Reno, Nevada; the principal office in California for the transaction of the business of the corporation shall be located at Cloverdale, Sonoma County, California.

Article II.

Directors

Section 1. Powers. All corporate powers (subject to limitations prescribed in the Articles of Incorporation, these By-Laws, and by law) shall be exercised by, or under the control of, and the business and affairs of this corporation shall be controlled by, a Board of Directors, at least a majority of whom shall be stockholders.

Section 2. Number. The authorized number of directors of this corporation shall be nine (9).

Section 3. Election and Term. Three directors shall be elected at each annual meeting, by each receiving a majority of the votes cast, who shall hold office for a term of three years or until their successors are elected and qualified. A majority of the stockholders at any special meeting called for that purpose may remove any director and fill the vacancy for the unexpired term. The votes for the election of a director shall be determined by further balloting until a director is elected by a majority of the votes cast.

Section 4. Nominating Committee. Prior to any annual meeting of the stockholders, the President shall appoint a nominating committee of stock-

Debtor's Exhibit H—(Continued)

holders other than directors to prepare a list of names eligible for election as directors. The committee, at least twenty (20) days prior to the date of such annual meeting, shall make their written report to the President specifying the names of those selected as such candidates, which list shall accompany the notice of such meeting. Nothing herein shall be construed to prevent nominations for directors from the floor at such meeting.

Section 5. Vacancies. Subject to the right of the stockholders to fill vacancies as above provided, vacancies occurring on the Board of Directors shall be filled by appointment of the Board, such appointees to hold office until the next succeeding election by the stockholders.

Section 6. Duties. The Board of Directors shall, in addition to the duties provided herein and by law, cause an audit to be made of the books of the company by a certified public accountant not less frequently than at the end of each fiscal year ending on December 31 of each year.

Section 7. Meetings. Regular monthly meetings of the Board of Directors shall be held at the call of the President, or if he be absent or be unable or refuse to call such meeting, of the Vice-President, or of any two directors, at a time to be fixed in the call, at the principal office of the corporation in California, or at any place which shall be designated from time to time by resolution of the Board of Directors or by written consent of all members of the Board. Five (5) days' notice of such meeting shall be given in writing.

Debtor's Exhibit H—(Continued)

Special meetings of the Board for any purpose or purposes whatever shall be called at any time by the President, or if he be absent or be unable or refuse to act, by the Vice-President, or by any two directors, upon five (5) days' notice in writing given to each director. Special meetings may be held at the the principal office of the corporation in California or at any place which may be designated from time to time by resolution of the Board or by written consent of all members of the Board.

Section 8. Quorum. A majority of the authorized number of directors shall constitute a quorum.

Article III.

Officers

Section 1. Election and Qualification. The officers of this corporation shall be a President, Vice-President, Secretary, Treasurer, and General Manager, who shall be appointed by the Board of Directors. Each of said officers shall serve until he shall resign or be removed or be disqualified, or until his successor shall be elected. The President and Vice-President must be Directors; the Secretary, Treasurer and General Manager may, but need not be Directors. All of such officers must be stockholders with the exception of the General Manager, who need not be a stockholder.

Section 2. President. The President shall:

(1) Preside at all meetings of the Board of Directors and at all meetings of the Stockholders;

(2) Call meetings of the Board of Directors;

Debtor's Exhibit H—(Continued)

(3) Exercise such other powers and perform such other duties as may be prescribed by the Board of Directors or these By-Laws.

Section 3. Vice-President. In the absence or incapacity of the President, the Vice-President shall perform the duties of the President, and shall also perform such other duties as may be prescribed for him by the Board of Directors.

Section 4. Secretary. The Secretary shall:

(1) Keep a book of minutes at the principal office of the corporation or such other place as the Board of Directors shall order, of all meetings of the Directors and stockholders in the form and manner required by law;

(2) Keep at the principal office or at the office of the corporation's transfer agent a share register or a duplicate share register, showing the details required by law, and also all other books of the corporation excepting books of account;

(3) Keep at the principal office open to inspection by stockholders at all reasonable times, the original or a certified copy of the By-laws of the corporation as amended or otherwise altered to date;

(4) Keep the corporate seal and affix it to all papers and documents requiring a seal;

(5) Attend to the giving and serving of all notices of the corporation required by law or these By-laws to be given;

(6) Attend to such correspondence as may be assigned to him and perform all other duties inci-

Debtor's Exhibit H—(Continued)

dental to his office or prescribed by the Board of Directors or by law.

Section 5. Treasurer. The Treasurer shall:

(1) Keep and maintain open to inspection by any Director at all reasonable times, adequate and correct accounts of the properties and business transactions of the corporation, which shall include all matters required by law and be in form as required by law; and shall send each Director regular monthly balance sheet and operating statement of the company on or before the 15th day of each month covering the operations of the preceding month.

(2) Have the care and custody of the funds and valuables of the corporation and deposit the same in the name of and to the credit of the corporation with such depositaries as the Board of Directors may designate;

(3) Disburse the funds of the corporation as he may be ordered by the Board, taking proper vouchers for such disbursements; all checks of the corporation shall be signed by such person or persons and in such manner as, from time to time, shall be determined by resolution by the Board.

(4) Render to the President or to the Board of Directors, whenever they may require it, an account of all his transactions as Treasurer, and a financial statement in form satisfactory to them, showing the condition of the corporation;

(5) Have such other powers and perform such

Debtor's Exhibit H—(Continued)

other duties as may be prescribed by the Board of Directors.

Section 6. Bonds. Any officer or other person having custody of or handling the funds or property of the corporation shall furnish a bond satisfactory to the Board of Directors, the cost of such bond to be paid by the corporation.

Section 7. General Manager. The General Manager shall have general supervision and direction of the business and affairs of the corporation. Without limiting, except as otherwise herein provided, his other powers, he may employ, suspend and discharge such agents and employees of the corporation as he may from time to time deem necessary, and prescribe their duties, terms of employment and compensation.

Article IV.

Meetings of Stockholders

Section 1. Annual. The annual meeting of the stockholders shall be held at the principal office of the corporation in California on the first Sunday of May of each year at 10 o'clock a.m., or at such other time and place as may be determined by the Board of Directors. In the event that the first Sunday in May is a legal holiday, the meeting shall be held on the next succeeding Sunday not a legal holiday.

Section 2. Special. Special meetings of the Stockholders for any purpose or purposes whatsoever may be called at any time by the President or by the Board of Directors. Special meetings may

Debtor's Exhibit H—(Continued)

also be called by stockholders holding at least 20% of the issued and outstanding stock. Upon receiving written request for such meeting from the stockholders, the Secretary shall call such meeting.

Section 3. Notice. Written notice of any meeting of stockholders shall be given to each stockholder entitled thereto not less than ten (10) days before such meeting in the manner prescribed by statute, which notice shall specify the day and hour and place of such meeting, provided that notice of special meetings shall also specify the general nature of the business to be transacted.

Section 4. Quorum. No meeting of stockholders shall transact business unless a majority of the shares entitled to vote thereat is represented, except to adjourn from day to day until such time as may be deemed proper.

Article V.

Capital Stock

Section 1. Capital stock shall be issued and transferred only as provided in the Articles of Incorporation. Transfers of certificates of stock shall be made only on the books of the corporation, and before a new certificate is issued the old certificate must be surrendered for cancellation.

Article VI.

Section 1. Power of Stockholders. New By-laws may be adopted or these By-laws may be amended or repealed by the vote of stockholders entitled to

Debtor's Exhibit H—(Continued)

exercise a majority of the voting power of the corporation, or by the written assent of such stockholders, except as otherwise provided by law or by the articles of incorporation.

Section 2. Power of Directors. Subject to the right of stockholders as provided in Section 1 of this Article VI to adopt, amend or repeal By-laws, By-laws other than the by-law or amendment thereof changing the authorized number of directors may be adopted, amended or repealed by the Board of Directors.

I, H. F. Tileston, hereby certify that I am secretary of Coastal Plywood & Timber Company, a corporation, that the foregoing is a true copy of the amended By-Laws of Coastal Plywood & Timber Company as adopted by the stockholders on the 10th day of September, 1950, at a special meeting of said stockholders; and that said Amended By-Laws have not been changed or rescinded.

/s/ H. F. TILESTON,
Secretary.

[Endorsed]: Filed February 14, 1952.

PETITIONERS' EXHIBIT No. 1

Coastal Plywood & Timber Company
Cloverdale, California
December 27, 1951

Planing Mill—Yard

The following men will be laid off as of close of the work day December 28, 1951: John Vick, J. W. Norberg, R. C. Zimmerman, Edwin Jasman, Milo Barnhart, N. G. Matson, George Scott, and Frank Sutton.

/s/ MARTIN T. DYKE,
Manager.

[Endorsed]: Filed February 11, 1952.

PETITIONERS' EXHIBIT No. 4

Certificate No. 14921

United States of America
State of Washington
Department [Seal] of State

To All to Whom These Presents Shall Come

I, Belle Reeves, Secretary of State of the State of Washington and custodian of the Seal of said State, do hereby certify that the annexed is a true and correct copy of the Agreement of Merger, merging the Coastal Plywood Corporation, a Washington Corporation, with and into the Coastal Plywood & Timber Company, a Nevada Corporation, the surviving corporation, as received and filed in this office on December 9, 1947.

Petitioners' Exhibit No. 4—(Continued)

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Washington. Done at the Capitol, at Olympia, this 9th day of December, A.D. 1947.

[Seal] BELLE REEVES,
Secretary of State,

By /s/ ROY J. YEOMAN,
Assistant Secretary of State.

Copy

State of Nevada,
Department of State—ss.

I, John Koontz, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that the annexed is a true, full and correct copy of the original Agreement of Merger, dated 9-9-47 merging The Coastal Plywood Corporation, a Washington Corporation, with and into The Coastal Plywood & Timber Company, a Nevada Corporation, the Surviving Corporation, now on file and of record in this office.

In Witness Whereof, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 1st day of December, A.D. 1947.

[Seal] JOHN KOONTZ,
Secretary of State.

Petitioners' Exhibit No. 4—(Continued)

Agreement of Merger

This Agreement of Merger, dated this 9th day of September, 1947, made by and between Coastal Plywood & Timber Company, a corporation organized and existing under the laws of the State of Nevada, and Coastal Plywood Corporation, a corporation organized and existing under the laws of the State of Washington;

Witnesseth:

That Whereas, said two corporations deem it advisable that Coastal Plywood Corporation be merged with and into Coastal Plywood & Timber Company, as authorized by the Statutes of the State of Washington and the State of Nevada, respectively, under and pursuant to the terms and conditions hereinafter set forth; and

Whereas, said Coastal Plywood & Timber Company has an authorized capital stock consisting of One Thousand (1,000) shares of stock, without nominal or par value, of which One Thousand (1,000) are issues and outstanding and are owned and held by individual stockholders; and

Whereas, Coastal Plywood Corporation has an authorized capital stock consisting of Two Hundred (200) shares of stock of the par value of Two Thousand Five Hundred Dollars ($2,500.00) per share, of which 180 are issued and outstanding and are owned and held by individual stockholders, and of which 20 shares are subscribed for but not paid in full as of the date of this agreement,

Petitioners' Exhibit No. 4—(Continued)

Now, Therefore, in consideration of the premises and mutual covenants, agreements, provisions and grants herein contained, the said corporations, by and between their respective boards of directors, the parties hereto, have agreed, and do hereby agree each with the other, that Coastal Plywood Corporation be merged with and into said Coastal Plywood & Timber Company, hereafter referred to as the "surviving corporation," under the name of Coastal Plywood & Timber Company, pursuant to the laws of the State of Washington and of the State of Nevada, respectively, and do hereby agree upon and prescribe the terms and conditions of said merger and of carrying the same into effect as follows:

First: Coastal Plywood Corporation shall be, and hereby is, merged into Coastal Plywood & Timber Company, and the said two corporations are hereby merged, it being the intention of the parties that, except as hereinafter provided and set forth, said Coastal Plywood & Timber Company shall retain its corporate existence as prior to said merger and continue as the surviving corporation and, as before, be named and known as "Coastal Plywood & Timber Company" and be under and subject to the laws of the State of Nevada, and its Amended Articles of Incorporation which, for the sake of clarity and as further amended by the terms of this merger agreement, are set forth in their entirety as follows:

Petitioners' Exhibit No. 4—(Continued)

The Amended and Substituted
Articles of Incorporation
of
Coastal Plywood & Timber Company

Article I.

The name of the corporation is: Coastal Plywood & Timber Company.

Article II.

The principal office and place of business of this corporation in the State of Nevada shall be located at Suite 28, Stack Building, 153 North Virginia Street, Reno, Washoe County, but the corporation may have and maintain office or offices in such towns, cities, states, foreign countries, and places, either in or outside of the State of Nevada, as the Board of Directors may from time to time determine to be convenient or practical, and all business of this corporation, of every kind and nature, may be transacted outside of the State of Nevada, the same as within the State of Nevada.

Article III.

The nature of the business and the objects and purposes for which this corporation is formed are, among other things, to organize, promote and carry on such ventures, business and businesses in general as may be determined from time to time by the Board of Directors.

In furtherance, but not in limitation, of the general powers conferred by the laws of the State of

Petitioners' Exhibit No. 4—(Continued)

Nevada, and of the objects and purposes hereinabove stated, it is hereby provided that this corporation will also have the following powers and privileges, namely:

(a) To engage in the business of operating sawmills, plywood plants, and other lumber manufacturing or remanufacturing plants or other wood working plants, in all parts of the world.

(b) To engage in the business of acquiring, either by lease or purchase, or otherwise, timber and timber lands, in all parts of the world; and to operate, sell, or otherwise deal in and with such properties.

(c) To manufacture, produce, purchase, or in any other lawful manner acquire, and to hold, own, mortgage, pledge, sell, transfer, or in any other lawful manner dispose of, and to deal and trade in all manner of goods, wares, equipment and merchandise and property of any and every kind, character, class and description, and in any or all parts of the world.

(d) To acquire, buy, purchase, or otherwise deal with the goodwill, rights and property, and to undertake the whole or any part of the assets or liabilities of any person, firm, association or corporation; to hold, or in any manner to dispose of, the whole or any part of any business so acquired, and to exercise all the powers necessary or convenient in and about the conduct and management of such business.

(e) To engage in any kind of mining, mining

Petitioners' Exhibit No. 4—(Continued)

engineering, mine management, and/or manufacturing business or businesses, and to construct, buy, exchange, contract for, lease, or otherwise acquire, take, hold, own, and to sell, mortgage, lease or otherwise dispose of mining, dredging and/or manufacturing plants, and to manage, operate, maintain, improve and develop the same, together with all machines, tools, equipment, appliances, appurtenances and/or facilities necessary or convenient in connection therewith.

(f) To purchase, hold, sell, exchange, or transfer, or otherwise deal in shares of its own capital stock, bonds, or other obligations from time to time, to such extent, and in such manner, and upon such terms as its Board of Directors shall determine; provided, that this corporation shall not use any of its funds or property for the purchase of its own shares of capital stock when such would cause any impairment of the capital of this corporation; and provided, further, that shares of its own capital stock belonging to this corporation shall not be voted, either directly or indirectly, nor counted as oustanding for the purpose of any stockholders' quorum or vote.

(g) To guarantee, purchase, or otherwise acquire, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of, the shares of the capital stock of, or any bonds, securities, or evidences of indebtedness created by any other corporation or corporations of this state, or any other state, country, nation or government; and, while owner of

Petitioners' Exhibit No. 4—(Continued)

said stock, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon to the same extent as natural persons might or could do.

(h) To loan money and to enter into, make and perform contracts of every kind, with any person, firm, association or corporation, municipality, political body, county, territory, state, government or colony or dependency thereof, and without limit as to amount; to draw, make, accept, endorse, discount, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures, and other negotiable or transferable instruments, and evidences of indebtedness, whether secured by mortgage or otherwise, as well as to secure the same by mortgage or otherwise, so far as may be permitted by the laws of the State of Nevada.

(i) To act as agent or factor for any person, firm or corporation; to conduct a general brokerage agency or commission business in the purchase, sale and/or management of real estate, or exploit for others, upon commission or otherwise, personal property, both tangible and intangible, including stocks, bonds, notes, patents, patent rights and licenses, and to negotiate loans thereon for others.

(j) To sell and issue shares of its capital stock, in such amounts, at such times, for such lawful considerations, and upon such terms, as the Board of Directors shall from time to time determine, subject to the limitations hereinafter set forth upon the sale and issuance of Class "A" common stock.

Petitioners' Exhibit No. 4—(Continued)

(k) To have offices, conduct its business, and promote its objects, within and without the State of Nevada, in other states, the District of Columbia, the territories and colonies of the United States, and in foreign countries, without restriction as to place or amounts.

(l) To carry on any other lawful business of any kind whatsoever which may seem to the corporation capable of being carried on in connection with the foregoing, or calculated, directly or indirectly, to promote the interests of the corporation, or to enhance the value of the properties, or to increase the volume or profits of its business or businesses; and to have, enjoy and exercise all the rights, powers and privileges which are now, or which may hereafter be, conferred upon corporations organized under the same statutes as this corporation, or which may be hereafter conferred by law.

(m) To do any and all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world, as, and/or through principals, agents, contractors, trustees, or otherwise, and either alone or in company with others.

In general, to carry on any other business in connection therewith, whether manufacturing or otherwise, not forbidden by the laws of the State of Nevada, and with all the powers conferred upon corporations by the laws of the State of Nevada.

Petitioners' Exhibit No. 4—(Continued)

Article IV.

The total number of shares of capital stock that may be issued by this corporation is eight hundred (800) shares of common stock divided into two classes:

(a) Four hundred (400) shares of Class "A" stock of the par value of Twenty-five Hundred Dollars ($2,500.00) each;

(b) Four hundred (400) shares of Class "B" stock without nominal or par value.

The Class "B" stock shall be distinguished from Class "A" stock in that it shall have voting privileges in the election of Directors, only as set forth in the succeeding Article V.

The Class "A" stock shall be entitled to receive one-half of all dividends declared and to receive one-half of any lawful distribution to stockholders of assets of the corporation, whether such distribution be partial or complete and whether on final liquidation or otherwise and whether voluntary or involuntary.

The Class "B" stock shall be entitled to receive one-half of all dividends declared and to receive one-half of any lawful distribution to stockholders of assets of the corporation, whether such distribution be partial or complete and whether on final liquidation or otherwise and whether voluntary or involuntary. Any such dividends or distribution of assets, shall first be allocated equally, that is, one-half to Class "A" stock and one-half

Petitioners' Exhibit No. 4—(Continued)

to Class "B" stock, and the share of each class shall then be apportioned equally among the stockholders, entitled to participate, of each class of stock.

Class "A" stock shall be issued, sold and transferred, whether by operation of law or otherwise, only in accordance with Article IX below.

The capital stock, after the amount of the subscription price, or par value, has been paid in, shall not be subject to assessment to pay the debts of the corporation.

Subscriptions for Class "A" stock may be accepted, subject to the provisions of Article IX herein, upon such terms and conditions as a majority of those directors elected by or representing Class "A" stockholders, may determine from time to time. No subscriber shall be entitled to a certificate of stock, until the subscription price is paid in full according to its terms, but so long as he is not in default in any of the terms of his subscription agreement, he shall be entitled to vote as a Class "A" stockholder, and shall be credited with any dividends declared on Class "A" stock, upon the purchase price of the stock.

Article V.

The number of Directors of this corporation is and shall be twelve (12). The holders of Class "A" stock shall be entitled to elect nine (9) of such Board of Directors and the holders of Class "B" stock shall be entitled to elect three (3) Directors. The terms in office and qualifications

Petitioners' Exhibit No. 4—(Continued)

of all Directors shall be determined and set forth in the Bylaws.

The number of Directors shall not be decreased or increased.

The names and post office addresses of the present Board of Directors who are to serve until the election and qualification of their successors are as follows:

Representing Class "A" stockholders:

Carl E. Anderson—P. O. Box 31, Cloverdale, California.

W. L. Brauning—P. O. Box 31, Cloverdale, California.

Ruben Carlson—P. O. Box 31, Cloverdale, California.

F. A. Johnson—P. O. Box 31, Cloverdale, California.

Gunnar Lindbeck—P. O. Box 31, Cloverdale, California.

Keith Meyn—P. O. Box 31, Cloverdale, California.

Lyall T. Neat—P. O. Box 31, Cloverdale, California.

L. J. Parks—304 Tuckor St., Healdsburg, California.

C. Frank Tileston, Jr.—P. O. Box 31, Cloverdale, California.

Petitioners' Exhibit No. 4—(Continued)

Representing Class "B" stockholders:

Walter M. Gleason—Merchants' Exchange Bldg., San Francisco, California.

Harry B. Murphy—P. O. Box 2127, Boise, Idaho.

George E. Murphy—302 Lumbermen's Bldg., Portland, Oregon.

In the event of a vacancy in the Directors elected by the holders of Class "A" stock, such vacancy shall be filled by appointment by the remainder of those Directors, and in the event of a vacancy in the Board of Directors elected by the holders of Class "B" stock such vacancy shall be filled by appointment by the remainder of those Directors. In the event that such appointments cannot be made for any reason the holders of the appropriate class or classes of stock shall elect the necessary Director or Directors at a special meeting duly called for that purpose, in accordance with the provisions of the Bylaws.

Article VI.

The Board of Directors shall have full and complete power to conduct, operate and manage the business and affairs of the corporation, subject only to such restrictions as shall be contained in these Articles or in the Bylaws of this corporation, or law. The following acts, deeds or things shall not be done, however, without the

Petitioners' Exhibit No. 4—(Continued)

consent and approval of the majority of the holders of the Class "B" stock duly expressed at a meeting called for such purpose in accordance with the Bylaws.

(1) The Corporation will not place any mortgage or other lien upon any of its property or assets; provided, however, that this shall not be construed as preventing purchase money mortgages or prior existing mortgages upon timberlands or other property acquired by the Corporation after its incorporation, if such mortgage is restricted to the property so acquired.

(2) The Corporation will not incur any indebtedness (except such as may represent indebtedness secured by purchase money mortgages or prior existing mortgages on after acquired property) maturing later than one (1) year from the date thereof, nor any indebtedness, except such as is incurred in the usual course of the Corporation's business.

(3) The Corporation will not authorize the issuance of any preferred or other stock having preferences or priorities over the Class "A" and "B" Common Stock.

(4) The Corporation will not make any loans to any of its stockholders, directors, officers or employees.

(5) The Corporation will not sell or convey all

Petitioners' Exhibit No. 4—(Continued)

or a substantial portion of its assets or consolidate or merge with any other corporation.

(6) The Corporation will not guarantee, nor will it permit any subsidiary corporation to guarantee, any obligations of any other corporation.

Article VII.

The stockholders and directors shall have power to hold their meetings, and to keep their books and records, outside of the State of Nevada, and at such place or places as may from time to time be designated by the Bylaws or by the Board of Directors, except as otherwise required by the laws of the State of Nevada.

Article VIII.

This Corporation is to have a perpetual existence.

Article IX.

In view of the particular nature of this Corporation and the contribution to the success thereof expected to ensue from the plan of identifying the management personnel and employees with Class "A" stock ownership, no shares of Class "A" stock may be issued except as follows:

One share of such stock only can be issued to or owned by any stockholder, and such stockholder must be an active employee, or a person acceptable to the Board of Directors as a future active employee of the Corporation.

Petitioners' Exhibit No. 4—(Continued)

It is further provided that:

(a) No owner of Class "A" stock may sell, transfer or assign his share until and unless he first gives to the Corporation's President or Secretary written notice of his intention to sell, transfer or assign, setting forth in such notice the number of the certificate therefor and the name and residence of the person who is the holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors shall, for a period of 60 days after receipt of such written notice, have the sole and exclusive option of purchasing said share at the bona fide market value, as hereinafter defined. Payment for such share may be made by the Board of Directors by depositing said bona fide market value to the credit of such shareholder in any National Bank in Cloverdale, California, or San Francisco, California, to be paid to such shareholder by said bank upon the surrender of the certificate for said share of Class "A" stock properly endorsed; the Board shall give written notice of such deposit to the shareholder (by registered mail addressed to the person and address given in the stockholder's notice).

(b) Any person acquiring through will, descent, or by conveyance to take effect at death, or sale in the administration of any estate, any share of Class "A" stock of the Corporation shall be bound to give written notice of such acquisition to the Presi-

Petitioners' Exhibit No. 4—(Continued)

dent or Secretary of the Corporation, setting forth in such notice the number of the certificate, the name of the registered holder, and the name and residence address of the person acquiring such share, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors, for a period of 60 days after receipt of such notice, shall have an exclusive option of purchasing such share at the bona fide market value, as hereinafter defined. The person so acquiring said share shall be notified of the exercise of said option and paid therefor in the manner prescribed in subparagraph (a).

(c) The purchaser of any share of Class "A" stock sold on execution or any other sale by operation of, or under authority of, law and the pledgee of any share of Class "A" stock before bringing any suit, action, or proceeding or doing any act to foreclose his pledge shall first deliver to the President or Secretary of the Corporation written notice of such purchase or intention to foreclose, designating the number of the certificate and the name and residence address of the pledgee or the present holder thereof, and the name of an appraiser, in the event appraisal, as hereinafter provided, is required. On behalf of the Corporation the Board of Directors shall have the sole and exclusive option, for a period of 60 days after receipt of such notice, to purchase said shares at the bona fide market value, as hereinafter defined. Notice of the exercise

Petitioners' Exhibit No. 4—(Continued)

of said option and payment to be accomplished in the manner hereinabove prescribed in subparagraph (a).

(d) On behalf of the Corporation the Board of Directors shall have the sole and exclusive option to purchase from any holder of Class "A" stock who shall fail to report for work within sixty (60) days after the mailing to him, by registered mail, of written call to report for work, or who shall voluntarily or involuntarily cease to be employed by the Corporation by reason of discharge, retirement, resignation, disability or any other reason whatsoever, the share of stock of such holder at the bona fide market value, as hereinafter defined, for a period of 60 days from such failure to report or such cessation of employment. Notice of the exercise of said option and payment to be accomplished in the manner prescribed in subparagraph (a).

The specific provisions governing discharge, retirement, or disability shall be set forth in the Bylaws.

(e) Shares of Class "A" stock shall give to the holder thereof no power to vote thereon and no right to dividends declared thereon subsequent to notification by the Corporation of its exercise of option to purchase under the terms and conditions defined in subparagraphs (a), (b), (c) and (d) above. Upon a stockholder's refusal to surrender his certificate, the Corporation, after making proper deposit of payment, may cancel such certificate.

(f) Shares of Class "A" stock acquired by the Corporation under the provisions of subparagraphs

Petitioners' Exhibit No. 4—(Continued)

(a), (b), (c) and (d) above may be resold only to persons who are or agree to become employees of the Corporation who own no Class "A" stock, limiting such resales to one share of Class "A" stock per employee.

(g) Bona fide market value is defined as follows:

(1) The Board of Directors and the person desiring to sell or foreclose may agree upon the bona fide market value at which the Corporation shall repurchase the stock.

(2) In the event said bona fide market value is not agreed upon it shall be determined by an appraisal made by a majority of three appraisers who shall be selected, one by any owner, holder or pledgee referred to in (a), (b), (c) and (d) above, one by the Board of Directors, and one by the two appraisers thus selected. If the two appraisers so selected shall not, within 20 days of their selection, agree upon the third appraiser, either party may apply, upon 5 days' written notice to the other, to any judge of any court of general jurisdiction in Sonoma or Mendocino county, California for the appontment of such third appraiser. The three appraisers so selected shall, within 20 days after the third appraiser is selected, appraise such shares and give written notice thereof to both parties, any expenses of appraisal to be paid one-half by each party. The Corporation's 60 day option to purchase, as set forth in (a), (b), (c) and (d) above, shall be extended by the time

Petitioners' Exhibit No. 4—(Continued)

required for selection of appraisers and appraisement.

(3) Bona fide market value shall be determined as of the date the Corporation receives the written notice referred to in subparagraphs (a), (b) and (c) above, or sends the written notice provided for in subparagraph (d) above.

(h) If the Corporation fails to exercise or waives its option to purchase said stock as provided for in this Article IX, said stock may be sold or transferred at any price agreed upon between the holder and the transferee, provided only, that such transferee is an active employee holding no Class "A" stock or is a person acceptable to the Board of Directors as a future active employee of the Corporation.

Article X.

These Articles may be amended only by majority vote of the holders of each class of stock, voting separately.

Second: The principal office of the surviving corporation in the State of Nevada is located at Suite 28, Stack Building, 153 North Virginia Street, Reno, County of Washoe, Nevada. The name and address of its resident agent is T. L. Withers, Withers & Edwards, Stack Building, 153 North Virginia Street, Reno, Nevada.

Third: The amount of capital with which the surviving corporation will continue business after said merger becomes effective will be $450,000.00, or more.

Petitioners' Exhibit No. 4—(Continued)

Fourth: The surviving corporation shall possess all the rights, privileges, powers and franchises as well of a public as of a private nature, and be subject to all the restrictions, disabilities and duties of such merging corporations, and all and singular, the rights, privileges, powers and franchises of each of said corporations, and all property, real, personal and mixed, and all debts due to any of said constituent corporations on whatever account, as well for stock subscriptions as all other things in action or belonging to each of such corporations, shall be vested in the surviving corporation, and all property, rights and privileges, powers and franchises, and all and every other interest, shall be thereafter as effectually the property of the surviving corporation as they were of the several and respective constituent corporations, and the title to any real or personal property, whether by deed or otherwise, under the laws of the States of Nevada and Washington vested in any of said constituent corporations, shall not revert or be in any way impaired by reason of this merger; provided that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of this merger, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said surviving corporation, and may be enforced against it

Petitioners' Exhibit No. 4—(Continued)

to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

Fifth: The private property of the stockholders of the surviving corporation shall not be subject to the payment of corporate debts to any extent whatsoever.

Sixth: The bylaws of the surviving corporation shall be the amended bylaws of the Coastal Plywood & Timber Company as set forth in Exhibit "A" attached hereto, and by reference incorporated herein.

Seventh: The manner of converting the shares of each of the constituent corporations into shares of the surviving corporation shall be as follows:

The holders of shares of the non-par stock of Coastal Plywood & Timber Company shall surrender the certificate therefor to the surviving corporation for cancellation, and shall receive for every two and one-half (2½) shares of such non-par stock so surrendered, and all accumulated dividends accrued and to accrue thereon, and any and all rights evidenced thereby, one share of non-par Class "B" common stock of the surviving corporation.

The holders of shares and the subscribers for shares of the stock of Coastal Plywood Corporation, of the par value of Two Thousand Five Hundred Dollars ($2,500.00) per share, shall surrender the certificates therefor, or have their stock subscriptions therefor automatically transferred, to the surviving corporation for cancellation, and shall

Petitioners' Exhibit No. 4—(Continued)

receive for every share of such par value stock so surrendered, and for every subscription therefor so transferred when paid, and all accumulated dividends accrued and to accrue thereon, and any and all rights evidenced thereby, one (1) share, or subscription to one (1) share, as the case may be, of Class "A" common stock of the par value of two thousand five hundred dollars ($2,500) per share of the surviving corporation.

Any and all unissued shares of Coastal Plywood Corporation shall not be eligible for exchange for stock of the surviving corporation, and all such unissued stock shall cease to exist immediately upon the effective date of this merger. Nothing herein contained, however, shall prevent the automatic transfer of stock subscriptions, as provided for in paragraph Fourth of this agrement, and all such stock subscriptions for shares in said Coastal Plywood Corporation shall henceforth be considered subscriptions for shares in the surviving corporation, as provided for above in this paragraph Seventh.

In connection with the consummation of this merger, there shall be no dedication of additional capital by the surviving corporation, either by transfer of earned surplus or otherwise. Any surplus appearing on the books of the constituent corporations, whatever the nature or origin of the same may be, shall be entered as surplus on the books of the surviving corporation, and any such surplus so entered on the books of the surviving

Petitioners' Exhibit No. 4—(Continued)

corporation shall be of the same character as it was on the books of the constituent corporations.

No holder of stock of the surviving corporation shall have any preemptive or preferential right of subscription to any shares of any class of stock of the surviving corporation which remain unissued after completion of the exchange provided for in this paragraph Seventh, or which may hereafter be created by way of increase of the surviving corporation's stock; the right to subscribe to any such unissued stock of any class of stock of the surviving corporation is to be governed by the terms of the Amended Articles of Incorporation of Coastal Plywood & Timber Company, hereinabove set forth.

From and after the effective date of this merger, the holders of the outstanding issued stock of both of the constituent corporations and the subscribers for any of the authorized but unissued stock of Coastal Plywood Corporation shall have no rights with respect thereto, except such rights as are expressly provided in this paragraph Seventh, or expressly accorded by the laws of the States of Nevada and Washington, respectively, applicable to this merger, and all such stock, and the issues of which they are a part, shall be cancelled and cease to exist upon surrender in accordance with the provisions of this paragraph Seventh, or the said laws of the State of Nevada and the State of Washington, and all such subscriptions for stock in Coastal Plywood Corporation shall, as hereinabove provided in paragraph Fourth of this agree-

Petitioners' Exhibit No. 4—(Continued)

ment be automatically transferred to and vested in the surviving corporation, and thereafter be enforceable only as subscriptions for stock in the surviving corporation, as hereinabove provided in this paragraph Seventh, and as provided in the laws of the States of Nevada and Washington.

As a condition precedent to the receipt of a share, or a subscription to a share, or Class "A" common stock, as herein provided, the holder (to wit, the person eligible to exchange his stock) or subscriber, as the case may be, shall first sign a contract of employment, in a form to be approved by the members of the Board of Directors elected by Class "A" stockholders, which shall contain, among other provisions, the terms of Article IX of the Amended and Substituted Articles of Incorporation, hereinabove set forth.

Eighth: The surviving corporation may, at any time, alter or amend any of the provisions of this agreement, to the extent permitted by law, by amendment of its Articles of Incorporation.

Ninth: This Agreement of Merger shall not become effective unless approved by a vote of sixty-six and two-thirds per cent (66⅔%) of the outstanding and issued stock of Coastal Plywood & Timber Company, voting separately, and unless approved by sixty-six and two-thirds per cent (66⅔%) of the authorized stock of Coastal Plywood Corporation, which is issued and outstanding voting separately, at meetings of the stockholders thereof called in accordance with the laws of the

Petitioners' Exhibit No. 4—(Continued)

State of Nevada and the State of Washington, respectively, for the purpose of approving or disapproving the terms of this agreement. All acts and things required to be done to effect the approval of this Agreement of Merger shall be attended to and done by the proper officers of the constituent corporations within such time and in such manner that the merger provided for herein will become effective on or before November 1, 1947.

In Witness Whereof the undersigned directors, being a majority or more of the Boards of Directors of each of the said constituent corporations, and having voted in favor of entering into the foregoing Agreement of Merger at director's meetings of the respective constituent corporations, duly called and regularly held for that purpose, have hereunto signed their names, and caused the corporate seals of the respective constituent corporations to be hereto affixed on the day and year first above written.

(Corporate Seal)

COASTAL PLYWOOD &
TIMBER COMPANY.

Directors:

WALTER M. GLEASON,

HARRY B. MURPHY,

GEORGE E. MURPHY,

C. FRANK TILESTON, JR.,

Petitioners' Exhibit No. 4—(Continued)

F. A. JOHNSON,

LYALL T. NEAT,

W. L. BRAUNING,

CARL E. ANDERSON,

KEITH W. MEYN,

RUBEN CARLSON,

GUNNAR LINDBECK,

L. J. PARKS.

I, George E. Murphy, Secretary of Coastal Plywood & Timber Company, hereby certify that the foregoing Agreement of Merger, after having been duly signed by a majority or more of the directors of each of the constituent corporations, was duly submitted to the stockholders of Coastal Plywood & Timber Company at a special meeting thereof, called separately by the Board of Directors for the purpose of considering and taking action upon said Agreement of Merger, and regularly held on the 20th day of September, 1947, and the holders of one hundred per cent (100%) of the issued and outstanding stock of said corporation being duly represented thereat and having filed with the Secretary written waiver of notice of the time, place and purpose thereof, in accordance with the by-laws and laws of the State of Nevada, a vote was taken by ballot for the adoption or rejection of said Agreement of Merger, and one hundred per

Petitioners' Exhibit No. 4—(Continued)

cent (100%) of the issued and outstanding stock of said corporation was voted in favor of the adoption of said Agreement of Merger.

In Witness Whereof, I have hereunto set my hand as Secretary and affixed the corporate seal of Coastal Plywood & Timber Company this 22nd day of October, 1947.

(Corporate Seal)

GEORGE E. MURPHY,
Secretary of Coastal Plywood
& Timber Company.

I, F. A. Johnson, Secretary of Coastal Plywood Corporation, hereby certify that the foregoing Agreement of Merger, after having been first duly signed by a majority or more of the directors of each of the constituent corporations, was duly submitted to the stockholders of Coastal Plywood Corporation at a special meeting thereof, called separately by the Board of Directors for the purpose of considering and taking action upon said Agreement of Merger, and regularly held on the 21st day of September, 1947, and the holders of eighty-five per cent (85%) of the issued and outstanding stock of said corporation, being duly represented thereat, and having received proper written notice of the time, place and purpose thereof, in accordance with the bylaws and the laws of the State of Washington, a vote was taken by ballot for the adoption or rejection of said Agreement of Merger, and seventy-eight and one-half

Petitioners' Exhibit No. 4—(Continued)

per cent (78.5%) of the issued and outstanding stock of the said corporation was voted in favor of the adoption of said Agreement of Merger.

In Witness Whereof, I have hereunto set my hand as Secretary and affixed the corporate seal of Coastal Plywood Corporation this 23rd day of October, 1947.

(Corporate Seal)

F. A. JOHNSON,
Secretary of Coastal Plywood Corporation.

The foregoing Agreement of Merger, having been executed by a majority or more of the directors of Coastal Plywood & Timber Company, a Nevada corporation, and Coastal Plywood Corporation, a Washington corporation, the corporate parties thereto, and having been submitted to the stockholders of both said Coastal Plywood & Timber Company and said Coastal Plywood Corporation, at special meetings thereof separately called and held in accordance with the statutes of the State of Nevada and the State of Washington, respectively, and having been adopted by votes cast by ballot of the stockholders of each of said corporate parties thereto, representing more than two-thirds of the total number of shares of each of the classes of outstanding capital stock of each of said corporate parties, all in accordance with the statutes of the State of Nevada and the State of Washington, respectively, and that fact having been cer-

Petitioners' Exhibit No. 4—(Continued)

tified on said Agreement of Merger by the Secretary of each of said corporate parties, the President and Secretary of each said corporate party do now hereby execute the said Agreement of Merger under the corporate seals of their respective corporations, by authority of the directors and stockholders thereof, as the respective act, deed and agreement of each of said corporations, on this 22nd day of October, 1947.

COASTAL PLYWOOD &
TIMBER COMPANY,

By HARRY B. MURPHY,
Its President,

By GEORGE E. MURPHY,
Its Secretary.

Attest:

GEORGE E. MURPHY,
Secretary.

(Corporate Seal)

COASTAL PLYWOOD
CORPORATION,

By C. FRANK TILESTON, JR.,
Its President,

By F. A. JOHNSON,
Its Secretary.

Attest:

F. A. JOHNSON,
Secretary.

(Corporate Seal)

Petitioners' Exhibit No. 4—(Continued)

State of California,
City and County of San Francisco—ss.

This Is to Certify that on this 22nd day of October, 1947, before me, the undersigned, a Notary Public in and for the State of California, duly commissioned and sworn, personally appeared Harry B. Murphy, to me known to be the President of Coastal Plywood & Timber Company, one of the corporations that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of the corporation.

Witness my hand and official seal, the day and year in this certificate first above written.

JAMES F. McCUE,
Notary Public in and for the State of California, residing at San Francisco.

State of California,
County of Sonoma—ss.

This Is to Certify that on this 23rd day of October, 1947, before me, the undersigned, a Notary Public in and for the State of California, duly commissioned and sworn, personally appeared C. Frank Tileston, Jr., to me known to be the President of Coastal Plywood Corporation, one of the corporations that executed the foregoing instru-

Petitioners' Exhibit No. 4—(Continued)

ment, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed is the corporate seal of said corporation.

Witness my hand and official seal, the day and year in this certificate first above written.

J. L. MILLER, JR.,
Notary Public in and for the State of California, residing at Cloverdale.

My commission expires August 28, 1951.

EXHIBIT "A"

Amended Bylaws of Coastal Plywood & Timber Company

Article I.

Place of Business

The principal office for the transaction of the business of the corporation shall be located at Suite 28, Stack Building, 153 North Virginia Street, Reno, Nevada.

Article II.

Directors

Section 1. The authorized number of Directors of this corporation shall be twelve (12), elected in the manner provided in the Articles of Incorporation.

Petitioners' Exhibit No. 4—(Continued)

Section 2. Election:

(a) Directors shall be elected at the annual meeting of the stockholders, as above provided, by a majority vote of the shares of each class of stock entitled to vote, who shall hold office as provided hereinafter and until their successors are elected. A majority of such stockholders at any special meeting duly called may remove any Director, elected by such stockholders, for cause, and fill the vacancy.

Section 3. Qualifications and terms of office:

(a) Directors elected by holders of Class "A" stock.

Such Directors shall be stockholders holding Class "A" stock, and at the first annual meeting of the stockholders held hereafter the three receiving the highest number of votes shall serve for a term of three years; the next three highest shall serve for two years; and the next three highest shall serve for one year. In the event of a tie vote, the position or positions shall be decided by drawing lots.

Thereafter three Directors shall be elected each year for a three-year term of office. Vacancies shall be filled in the manner provided in the Articles of Incorporation, i.e. such vacancy shall be filled by appointment by the remainder of those Directors. In the event that such appointment cannot be made for any reason, the Class "A" stockholders shall elect the necessary Director or Directors at a special meeting, duly called for that purpose.

Petitioners' Exhibit No. 4—(Continued)

Prior to any annual meeting of the stockholders, the President shall appoint a nominating committee of three Class "A" stockholders other than Directors to prepare a list of names eligible as Directors, to be voted on by the Class "A" stockholders at their meeting. Nothing herein shall be construed to prevent nominations for Directors from the floor at such meeting. The committee, at least twenty (20) days prior to the date of such annual meeting, shall make their written report to the President, and the list of proposed names shall be submitted to the Class "A" stockholders for their information, with the notice of such meeting.

(b) Directors elected by holders of Class "B" stock.

Such Directors shall be stockholders holding Class "B" stock, and at the first annual meeting of the stockholders held hereafter shall be elected for concurrent terms of one (1) year each. Vacancies shall be filled in the manner provided in the Articles of Incorporation, i.e. such vacancy shall be filled by appointment by the remainder of those Directors.

Section 4. Powers:

All corporate powers (subject to limitations of the Articles of Incorporation and to the provisions of law requiring action to be authorized or approved by the stockholders) shall be exercised by, or under authority of, and the business and affairs of this corporation shall be controlled by, its Board

Petitioners' Exhibit No. 4—(Continued)

of Directors, and, subject to the same limitations, the Board shall also have power:

(a) To appoint by resolution an executive committee composed of three or more members of the Board of Directors selected by such Board, the power of which committee shall be limited to supervising the day to day operations of the respective departments of the business.

Section 5. Duties:

The Board of Directors shall, in addition to the duties provided herein and by law, cause an audit to be made of the books of the Company by a certified public accountant not less frequently than at the end of each fiscal year, ending on December 31st of each year.

The Board of Directors shall, at the end of each calendar year, declare as dividends to stockholders all earnings of the corporation in excess of such reserves for working capital, contract payments, amortization of loans and other reserves which may have been authorized and set up by the Board of Directors with the separate vote of approval of the majority of the directors elected by the Class "B" stockholders.

Promptly after the receipt of the monthly statements, the Board of Directors shall examine the financial condition of the business, and if the Company, as a whole, is showing a loss and if sufficient steps cannot be taken to eliminate such loss, the Board of Directors shall temporarily suspend the operations of the Company, unless the continuance

Petitioners' Exhibit No. 4—(Continued)

of operations at a loss in any or all departments is authorized in writing by the Board of Directors, with the separate vote of approval of the majority of the Directors elected by the Class "B" stockholders.

Section 6. Meetings:

Monthly meetings of the Board of Directors shall be held at the call of the President, or if he be absent or be unable or refuse to call such meeting, by the Vice-President or by any two Directors at a time to be fixed in the call, at the principal office of the corporation, or at any place which shall be designated from time to time by resolution of the Board or by written consent of all members of the Board. Ten days' notice of such meeting shall be given in writing.

Special meetings of the Board, for any purpose or purposes whatever shall be called at any time by the President, or if he be absent or be unable or refuse to act, by the Vice-President or by any two Directors, upon five days' notice in writing or by telegram given to each Director. Such meeting may be held at the principal office of the corporation or at any place which shall be designated from time to time by resolution of the Board or by written consent of all members of the Board.

Section 7. Quorum:

Subject to the limitations herein prescribed where action is to be taken by Directors elected by holders of each of the classes of stock, a majority of the authorized number of Directors shall constitute a quorum.

Petitioners' Exhibit No. 4—(Continued)

Article III.

Officers

Section 1. Election:

The officers of this corporation shall be President, Vice-President, Secretary and Treasurer, who shall be chosen by the Board of Directors, and a General Manager chosen as hereinafter prescribed. Each of said Officers shall serve until he shall resign, or be removed, or become disqualified, or until his successor shall be elected. The President and Vice-President must be Directors, and the Secretary and Treasurer may, but need not necessarily be a Director. All of such officers however, must be Class "A" stockholders.

Section 2. President:

The President shall:

(1) Preside at all meetings of the Board of Directors and at all meetings of the stockholders;

(2) Call meetings of the Board of Directors;

(3) Exercise such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 3. Vice-President:

In the absence or incapacity of the President, the Vice-President shall perform the duties of the President, and shall also perform such other duties as may be prescribed for him by the Board of Directors.

Section 4. Secretary:

The Secretary shall:

(1) Keep a book of minutes at the principal

Petitioners' Exhibit No. 4—(Continued)

office of the corporation or such other place as the Board of Directors shall order, of all meetings of the Directors and stockholders in the form and manner required by law;

(2) Keep at the principal office or at the office of the corporation's transfer agent a share register or a duplicate share register, showing the details required by law, and also all other books of the corporation excepting books of account;

(3) Keep at the principal office open to inspection by stockholders at all reasonable times, the original or a certified copy of the Bylaws of the corporation as amended or otherwise altered to date;

(4) Keep the corporate seal and affix it to all papers and documents requiring a seal;

(5) Attend to the giving and serving of all notices of the corporation required by law or these Bylaws to be given;

(6) Attend to such correspondence as may be assigned to him and perform all other duties incidental to his office or prescribed by the Board of Directors or by law.

Section 5. Treasurer:

The Treasurer shall:

(1) Keep and maintain open to inspection by any Director at all reasonable times, adequate and correct accounts of the properties and business transactions of the corporation, which shall include all matters required by law and be in form as required by law; and shall send each director

Petitioners' Exhibit No. 4—(Continued)

regular monthly balance sheet and operating statement of the Company on or before the 15th day of each month covering the operations of the preceding month.

(2) Have the care and custody of the funds and valuables of the corporation and deposit the same in the name of and to the credit of the corporation with such depositaries as the Board of Directors may designate;

(3) Disburse the funds of the corporation as he may be ordered by the Board, taking proper vouchers for such disbursements; all checks of the corporation shall be signed by any two of the President, Vice-President or Treasurer;

(4) Render to the President or to the Board of Directors, whenever they may require it, an account of all his transactions as Treasurer, and a financial statement in form satisfactory to them, showing the condition of the corporation;

(5) Have such other powers and perform such other duties as may be prescribed by the Board of Directors.

Section 6. Bonds:

Any officer or other person having custody of or handling the funds or property of the corporation shall furnish a bond satisfactory to the Board of Directors, the cost of such bond to be paid by the corporation.

Section 7. General Manager:

A General Manager shall be appointed by the

Petitioners' Exhibit No. 4—(Continued)

Board of Directors but he shall not be selected or removed or his compensation fixed except by concurrence of a majority of those members of the Board of Directors elected by the Class "B" stockholders. The General Manager shall not be a stockholder of either Class "A" or Class "B" stock. Subject to the control of the Board of Directors or Executive Committee, he shall have general supervision and direction of the business and affairs of the corporation. Without limiting, except as herein provided, his other powers, he may:

(1) Select and fix, with the approval of the Board of Directors, the compensation of a superintendent for each operating unit of the corporation; such superintendent to be neither a Class "A" nor a Class "B" stockholder. Such superintendent shall not be removed without the consent of the General Manager.

(2) Employ, suspend and discharge, subject to the approval of the Board of Directors, such non-stockholder agents and employees as the business of the corporation shall from time to time require, and prescribe their terms of employment and compensation, and also prescribe the duties of all employees, stockholders and non-stockholders. Compensation of employed Class "A" stockholders shall be governed by Article IV. Suspension and discharge of employed Class "A" stockholders shall be governed by Article V.

(3) Women shall not be employed in production or handling of manufactured materials.

Petitioners' Exhibit No. 4—(Continued)

Article IV.

Wages

Section 1. An employed stockholder holding Class "A" common stock shall be entitled before the payment of dividends on Class "A" common stock and Class "B" common stock to withdraw and be paid his wages, not in excess of the following sums:

(a) Every employed Class "A" stockholder, regardless of whether he begins his employment before or after the sawmill shall have attained production, shall work for a "beginning period" at the rate of One and 51/100 Dollars ($1.51) per hour. The length of the "beginning period" shall be at least nine (9) months, or the number of months from September 15, 1946, until the sawmill shall have attained production, if that be more than nine (9) months;

(b) After the expiration of the "beginning period," an employed Class "A" stockholder may be paid not in excess of Two and 23/100 Dollars ($2.23) per hour, such increases over the average going wage of the industry being considered an incentive wage predicated on the recognition that the gross average output per man of employees of Class "A" stockholders' group will exceed the average per man output of the industry; provided, however, that if the average straight time hourly rate of pay in these respective non-cooperative industries in Washington and Oregon falls below or rises

Petitioners' Exhibit No. 4—(Continued)

above the average straight time hourly rate of One and 51/100 Dollars ($1.51) per hour now prevailing, the hourly rate then payable, both during the beginning period and thereafter, shall be reduced or increased in the same amount, penny for penny, it being understood that no adjustment in said hourly rate shall be made except in the event of a full 2½c per hour change upward or downward, in the average straight time hourly rate.

Section 2. Vacations:

(a) Each employee, after one year of continuous employment, shall be entitled each year to one (1) week's vacation with pay (based on the 40 hour week at the employee's straight time hourly rate in effect on the pay day immediately preceding the date fixed as the start of the vacation), or, at the discretion of the Board of Directors, a possible two (2) weeks' vacation with pay. The Board of Directors may grant longer vacations than two (2) weeks, upon such terms and conditions as may seem advisable to it upon concurrence of a majority of the directors elected by the Class "B" stock voting separately.

(b) To be eligible for a vacation with pay the employee must have been in the continuous employment of the Company for one year prior to June 1st of the year during which the vacation takes place and must be on the payroll at the time his vacation commences.

(c) "Continuous employment" for purposes of

Petitioners' Exhibit No. 4—(Continued)

vacation is defined as employment uninterrupted by:

(1) Abence due to discharge.

(2) Leave of absence granted by the Company in excess of thirteen (13) weeks.

(3) Involuntary layoffs totalling in excess of thirteen (13) weeks due to shutdowns for causes over which the Company has no control. Working on any one day of the calendar week shall be counted as "continuous employment" during that week.

However, time lost as a result of an accident, as recognized by California workmen's compensation laws, rules, and regulations, suffered during the course of employment, and the vacation period shall be considered as time worked.

(d) Time for taking vacations shall be determined by the General Manager, whose determination shall be final.

(e) Any other details concerning vacations shall be determined by resolution of the Board of Directors.

Article V.

Employee Relations

Section 1. Suspension:

The General Manager may for cause suspend any employee without pay, for a period of not more than fifteen (15) days, and with the approval of a majority of the Board of Directors elected by the Class "A" stockholders, may for cause

Petitioners' Exhibit No. 4—(Continued)

suspend any employee without pay for a period of not more than thirty (30) days. The employee suspended may appeal his suspension to the Board of Directors within forty-eight (48) hours, if he feels that he has been suspended without sufficient cause. If his appeal is sustained, he will be reinstated and reimbursed for time lost.

Section 2. Discharge:

A Class "A" stockholder employee may not be discharged except with the approval of the majority of the members of the Board of Directors who are elected by the Class "A" stockholders. If the Class "A" stockholder so discharged is unwilling to accept the decision of said Directors, he may request in writing of the President, Vice-President or Secretary, within ten (10) days of such decision, that his discharge be reviewed at a meeting of the Class "A" stockholders called for the purpose in accordance with the provisions of the By-laws. Unless a majority of the stockholders voting at such meeting approves such discharge, it shall not be effective.

Section 3. Disability:

Disability resulting in termination of employment is defined as that condition existing when an employee—Class "A" stockholder has become physically or mentally disabled to the extent that he is permanently unable to work and when such disability has been determined by a majority of a board of three (3) doctors chosen one by the employee, one by the General Manager and one by

Petitioners' Exhibit No. 4—(Continued)

the two thus chosen. The decision of this board shall be submitted in writing to the General Manager, and shall be final.

Section 4. Retirement:

Within one (1) year after both the plywood plant and the sawmill are in production, the Board of Directors shall adopt a retirement plan satisfactory to the Class "A" stockholders for all or part of the employees, upon such terms and conditions as seem advisable, provided such plan is approved by a separate vote of a majority of the Directors elected by the Class "B" stockholders.

Section 5. Duty in Armed Services:

Any employee-stockholder answering the call to duty in the Army, Navy or any of their direct branches during any period of national emergency, either for training or for service, shall be granted leave of absence and retain all rights and privileges as an employee-stockholder including dividend and voting rights but shall not be entitled to wages during such absence. Said employee-stockholder shall report as soon as possible to the Company upon completion of his service.

Article VI.

Meetings of Stockholders

Section 1. Annual:

The first annual meeting of the stockholders shall be held in Tacoma, Washington, on November 23, 1947. Thereafter the annual meetings of the stockholders shall be held on the first Sunday of May

Petitioners' Exhibit No. 4—(Continued)

of each year at 10:00 o'clock a.m. of said day at the principal office for the transaction of the business of the corporation, or at such other place within or without the State of Nevada designated by the Board of Directors. In the event that the first Sunday in May of any year is a legal holiday, the meeting shall be held on the next succeeding Sunday in May, not a legal holiday.

Section 2. Special:

Special meetings of all the stockholders or of stockholders holding Class "A" or Class "B" stock (where the purpose of the meeting relates only to such class), for any purpose or purposes whatsoever, may be called at any time by the President or by the Board of Directors. Such meetings may also be called by stockholders holding 20 per cent (20%) of either class of stock. Upon receiving written request for such meeting from the stockholders the Secretary shall call a special meeting.

Section 3. Notice:

Written notice of any meeting of stockholders shall be given to each stockholder entitled thereto not less than ten (10) days before such meeting in the manner prescribed by statute, and shall specify the day and hour and place of meeting, provided that notice of special meetings shall specify also the general nature of the business to be transacted.

Section 4. Quorum:

No meeting of stockholders shall transact busi-

Petitioners' Exhibit No. 4—(Continued)

ness unless a majority of the shares entitled to vote thereat is represented, except to adjourn from day to day, or until such time as may be deemed proper.

Article VII.

Capital Stock

Section 1. Capital stock shall be issued and transferred only as provided in the Articles of Incorporation. Transfers of certificates of stock shall be made only on the books of the corporation, and before a new certificate is issued the old certificate must be surrendered for cancellation.

Article VIII.

Amendments

Except as herein provided, these Bylaws may be amended or repealed or new Bylaws may be adopted only by a majority vote of the holders of each class of stock, voting separately.

Article II, Section 3 (a) and Article V, Sections 1, 2, and 3, may be amended and shall only be amended by majority vote of the Class "A" stockholders. Article II, Section 3 (b) may be amended and shall only be amended by majority vote of the Class "B" stockholders.

Agreement of Merger dated September 9, 1947, merging the Coastal Plywood Corporation, a Washington corporation, with and into the Coastal Plywood & Timber Company, a Nevada corporation the surviving corporation.

Petitioners' Exhibit No. 4—(Continued)

Filed at the request of McMicken, Rupp & Schweppe, Attorneys, 657-671 Colman Bldg., Seattle 4, Wash., December 1, 1947.

JOHN KOONTZ,
Secretary of State.

[Endorsed]: Filed February 11, 1952.

PETITIONERS' EXHIBIT No. 5

Amended Bylaws of Coastal Plywood & Timber Company

Article I.

Place of Business

The principal office in the State of Nevada for the transaction of the business of the corporation shall be located at Room 1, Blitz Building, 43 Sierra Street, Reno, Nevada; the principal office in California for the transaction of the business of the corporation shall be located at Cloverdale, Sonoma County, California.

Article II.

Directors

Section 1. Powers. All corporate powers (subject to limitations prescribed in the Articles of Incorporation, these Bylaws and by law) shall be exercised by or under the control of and the business and affairs of this corporation shall be con-

Petitioners' Exhibit No. 5—(Continued)

trolled by a Board of Directors, at least a majority of whom shall be stockholders.

Section 2. Number. The authorized number of directors of this corporation shall be nine (9).

Section 3. Election and Term. Three directors shall be elected at each annual meeting, by each receiving a majority of the votes cast, who shall hold office for a term of three years or until their successors are elected and qualified. A majority of the stockholders at any special meeting called for that purpose may remove any director and fill the vacancy for the unexpired term. The votes for the election of a director shall be determined by further balloting until a director is elected by a majority of the votes cast.

Section 4. Nominating Committee. Prior to any annual meeting of the stockholders, the President shall appoint a nominating committee of stockholders other than directors to prepare a list of names eligible for election as directors. The committee, at least twenty (20) days prior to the date of such annual meeting, shall make their written report to the President specifying the names of those selected as such candidates, which list shall accompany the notice of such meeting. Nothing herein shall be construed to prevent nominations for directors from the floor at such meeting.

Section 5. Vacancies. Subject to the right of the stockholders to fill vacancies as above provided, vacancies occurring on the Board of Directors shall be filled by appointment of the Board, such ap-

Petitioners' Exhibit No. 5—(Continued)

pointees to hold office until the next succeeding election by the stockholders.

Section 6. Duties. The Board of Directors shall, in addition to the duties provided herein and by law, cause an audit to be made of the books of the company by a certified public accountant not less frequently than at the end of each fiscal year ending on December 31 of each year.

Section 7. Meetings. Regular monthly meetings of the Board of Directors shall be held at the call of the President, or if he be absent or be unable or refuse to call such meeting, of the Vice-President, or of any two directors, at a time to be fixed in the call, at the principal office of the corporation in California, or at any place which shall be designated from time to time by resolution of the Board of Directors or by written consent of all members of the Board. Five (5) days' notice of such meeting shall be given in writing.

Special meetings of the Board for any purpose or purposes whatever shall be called at any time by the President, or if he be absent or be unable or refuse to act, by the Vice-President, or by any two directors, upon five (5) days' notice in writing given to each director. Special meetings may be held at the principal office of the corporation in California or at any place which may be designated from time to time by resolution of the Board or by written consent of all members of the Board.

Section 8. Quorum. A majority of the authorized number of directors shall constitute a quorum.

Petitioners' Exhibit No. 5—(Continued)

Article III.

Officers

Section 1. Election and Qualification. The officers of this corporation shall be a President, Vice-President, Secretary, Treasurer, and General Manager, who shall be appointed by the Board of Directors. Each of said officers shall serve until he shall resign or be removed or be disqualified, or until his successor shall be elected. The President and Vice-President must be Directors; the Secretary, Treasurer and General Manager may, but need not be Directors. All of such officers must be stockholders with the exception of the General Manager, who need not be a stockholder.

Section 2. President. The President shall:

(1) Preside at all meetings of the Board of Directors and at all meetings of the Stockholders;

(2) Call meetings of the Board of Directors;

(3) Exercise such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

Section 3. Vice-President. In the absence or incapacity of the President, the Vice-President shall perform the duties of the President, and shall also perform such other duties as may be prescribed for him by the Board of Directors.

Section 4. Secretary. The Secretary shall:

(1) Keep a book of minutes at the principal office of the corporation or such other place as the Board of Directors shall order, of all meetings of

Petitioners' Exhibit No. 5—(Continued)

the Directors and stockholders in the form and manner required by law;

(2) Keep at the principal office or at the office of the corporation's transfer agent a share register or a duplicate share register, showing the details required by law, and also all other books of the corporation excepting books of account;

(3) Keep at the principal office open to inspection by stockholders at all reasonable times, the original or a certified copy of the Bylaws of the corporation as amended or otherwise altered to date:

(4) Keep the corporate seal and affix it to all papers and documents requiring a seal;

(5) Attend to the giving and serving of all notices of the corporation required by law or these Bylaws to be given;

(6) Attend to such correspondence as may be assigned to him and perform all other duties incidental to his office or prescribed by the Board of Directors or by law.

Section 5. Treasurer. The Treasurer shall:

(1) Keep and maintain open to inspection by any Director at all reasonable times, adequate and correct accounts of the properties and business transactions of the corporation, which shall include all matters required by law and be in form as required by law; and shall send each Director regular monthly balance sheet and operating statement of the company on or before the 15th day of each

Petitioners' Exhibit No. 5—(Continued)

month covering the operations of the preceding month.

(2) Have the care and custody of the funds and valuables of the corporation and deposit the same in the name of and to the credit of the corporation with such depositaries as the Board of Directors may designate;

(3) Disburse the funds of the corporation as he may be ordered by the Board, taking proper vouchers for such disbursements; all checks of the corporation shall be signed by such person or persons and in such manner as, from time to time, shall be determined by resolution by the Board.

(4) Render to the President or to the Board of Directors, whenever they may require it, an account of all his transactions as Treasurer, and a financial statement in form satisfactory to them, showing the condition of the corporation;

(5) Have such other powers and perform such other duties as may be prescribed by the Board of Directors.

Section 6. Bonds. Any officer or other person having custody of or handling the funds or property of the corporation shall furnish a bond satisfactory to the Board of Directors, the cost of such bond to be paid by the corporation.

Section 7. General Manager. The General Manager shall have general supervision and direction of the business and affairs of the corporation. Without limiting, except as otherwise herein provided, his other powers, he may employ, suspend and discharge

Petitioners' Exhibit No. 5—(Continued)

such agents and employees of the corporation as he may from time to time deem necessary, and prescribe their duties, terms of employment and compensation.

Article IV.

Meetings of Stockholders

Section 1. Annual. The annual meeting of the stockholders shall be held at the principal office of the corporation in California on the first Sunday of May of each year at 10 o'clock a.m., or at such other time and place as may be determined by the Board of Directors. In the event that the first Sunday in May is a legal holiday, the meeting shall be held on the next succeeding Sunday not a legal holiday.

Section 2. Special. Special meetings of the Stockholders for any purpose or purposes whatsoever may be called at any time by the President or by the Board of Directors. Special meetings may also be called by stockholders holding at least 20% of the issued and outstanding stock. Upon receiving written request for such meeting from the stockholders, the Secretary shall call such meeting.

Section 3. Notice. Written notice of any meeting of stockholders shall be given to each stockholder entitled thereto not less than ten (10) days before such meeting in the manner prescribed by statute, which notice shall specify the day and hour and place of such meeting, provided that notice of special meetings shall also specify the general nature of the business to be transacted.

Section 4. Quorum. No meeting of stockholders

Petitioners' Exhibit No. 5—(Continued)

shall transact business unless a majority of the shares entitled to vote thereat is represented, except to adjourn from day to day until such time as may be deemed proper.

Article V

Capital Stock

Section 1. Capital stock shall be issued and transferred only as provided in the Articles of Incorporation. Transfers of certificates of stock shall be made only on the books of the corporation, and before a new certificate is issued the old certificate must be surrendered for cancellation.

Article VI.

Section 1. Power of Stockholders. New Bylaws may be adopted or these Bylaws may be amended or repealed by the vote of stockholders entitled to exercise a majority of the voting power of the corporation, or by the written assent of such stockholders, except as otherwise provided by law or by the articles of incorporation.

Section 2. Power of Directors. Subject to the right of stockholders as provided in Section 1 of this Article VI to adopt, amend or repeal Bylaws, Bylaws other than the bylaw or amendment thereof changing the authorized number of directors may be adopted, amended or repealed by the Board of Directors.

I, H. F. Tileston, hereby certify that I am Secretary of Coastal Plywood & Timber Company, a

Petitioners' Exhibit No. 5—(Continued)

corporation, that the foregoing is a true copy of the amended Bylaws of Coastal Plywood & Timber Company as adopted by the stockholders on the 10th day of September, 1950, at a special meeting of said stockholders; and that said Amended Bylaws have not been changed or rescinded.

/s/ H. F. TILESTON,
Secretary.

[Endorsed]: Filed February 11, 1952.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents listed below, are the originals filed in this Court in the above-entitled case, and that they constitute the record on appeal herein as designated by the parties, viz.:

Order appointing trustee and prescribing powers and duties.

Affidavit of Webster V. Clark in support of motion for leave to litigate suit in State Court.

Petition of Trustee for authority to employ a manager, for approval of rates of compensation to

be paid said manager and other agents and employees of the debtor, etc.

Order authorizing Trustee to employ a manager, for approval of rates of compensation to be paid said manager and other agents and employees of the debtor, etc.

Report of the Trustee.

Order approving retention of Trustee in Office.

Stipulation.

Petition for reinstatement of employees with back pay.

Motion of Fred G. Stevenot, Trustee of debtor, to dismiss petition for reinstatement of employees, etc.

Interlocutory order reinstating employees with back pay.

Notice of appeal from interlocutory order reinstating employees with back pay.

Statement of points upon which appellant intends to rely on appeal.

Motion to require Trustee and appellant to file transcript of record and supersedeas bond.

Order extending time to docket appeal.

Order extending time to docket appeal.

Order reinstating employees with back pay.

Order requiring Trustee and appellant to file supersedeas bond.

Designation by appellant of contents of record on appeal.

Designation by appellees of additional portions of the record, proceedings and evidence to be included in the record on appeal.

Petitioner's Exhibits 1 to 10, inclusive.

Debtor-Respondent's Exhibits A to I, inclusive.

In Witness Whereof, I have hereunto set my hand and the seal of said Court this 21st day of May, 1952.

[Seal] /s/ C. W. CALBREATH,
Clerk,

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the accompanying Reporter's Transcript is the original filed in this case, in this Court and constitute the supplemental record on appeal:

Notice of appeal from order requiring trustee and appellant to file supersedeas bond.

Notice of appeal from order reinstating employees with back pay.

Disbursements on account of petition for reinstatement of employees with back pay.

Stipulation continuing hearing of taxation of costs.

Affidavit in support of memorandum of costs and disbursements.

Letter of May 29th, 1952, in opposition to taxation of costs.

Designation of points upon which appellant intends to rely on appeal from order requiring trustee to file supersedeas bond.

Letter of June 3rd, 1952, in opposition to taxation of costs.

Letter of June 3rd, in support of motion to tax costs.

Statement of points upon which appellant intends to rely on appeal from order reinstating employees with back pay, filed May 16th, 1952.

Decision re taxation of costs in form of letter dated June 6th, 1952.

Notice of motion by petitioners to review taxation of costs by Clerk and to retax costs.

Order granting motion to retax costs.

Notice of appeal from order retaxing costs.

Statement of points upon which appellant intends to rely on appeal from the order granting motion to retax costs, filed herein on July 11th, 1952.

Designation by trustee and appellant of contents of record on appeal from order granting motion to retax costs.

Designation by appellees of additional portions of the record, proceedings and evidence to be included in the record on appeal.

In Witness Whereof, I have hereunto set my

hand and the seal of said Court this 31st day of July, 1952.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Title of District Court and Cause.]

SUPPLEMENTAL CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the accompanying Reporter's Transcript is the original filed in this case, in this Court and constitutes the Supplemental Record on Appeal.

Dated May 23rd, 1952.

[Seal] C. W. CALBREATH,
Clerk,

By /s/ C. C. EVENSEN,
Deputy Clerk.

[Endorsed]: No. 13393. United States Court of Appeals for the Ninth Circuit. Fred G. Stevenot, Trustee of Coastal Plywood & Timber Company, a Corporation, Debtor, Appellant, vs. J. W. Norberg, Nils G. Matson, Merritt W. Tallman, Milo F. Barnhart, Roland C. Zimmermann, Floyd C. Jackson, Gladys M. Zimmermann, Edwin H. Jasmann, Frank Sutton, George F. Scott and John E. Vick, Appelees. Transcript of Record, Supplemental Transcript of Record, and Second Supplemental Transcript of Record. Appeals From the United States District Court for the Northern District of California, Northern Division.

Transcript of Record Filed May 22, 1952.

Supplemental Transcript of Record Filed July 31, 1952.

Second Supplemental Transcript of Record Filed September 18, 1952.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 13,393

In the Matter of:
COASTAL PLYWOOD & TIMBER COMPANY,
a Corporation,

Debtor.

In Proceedings for the Reorganization
Of a Corporation

STATEMENT OF POINTS UPON WHICH APPELLANT INTENDS TO RELY ON APPEAL

Now comes Fred G. Stevenot, Trustee of the Debtor above named, and appellant above named, and sets forth a statement of the points upon which appellant intends to reply on appeal, as follows:

1. Said Appellant refers to the Statement of Points Upon Which Appellant Intends to Rely Upon Appeal, filed in the above-entitled matter in the Office of the Clerk of the United States District Court, in and for the Northern District of California, Northern Division, on the 7th day of March, 1952, and incorporates said statement of points herein as fully and to all intents and purposes as though said points were specifically set forth herein.

In addition to the foregoing, said Appellant hereby designates the following additional points upon which he intends to rely on appeal:

(a) The District Court erred in making its Interlocutory Order Reinstating Employees With Back Pay.

(b) The District Court erred in making its Order Requiring Trustee and Appellant to File a Supersedeas Bond.

Dated May 27th, 1952.

ORRICK, DAHLQUIST, NEFF
& HERRINGTON,

By /s/ GEORGE HERRINGTON,

/s/ STERLING CARR,
Attorneys for Said Appellant.

[Endorsed]: Filed May 28, 1952.